

THE IDEA OF DIRECT DEMOCRACY IN THE CONSTITUTION OF THE FIRST REPUBLIC OF GEORGIA

ABSTRACT

One century has passed since the adoption of the Constitution of Georgia of 21 February 1921. Until now the 1921 Constitution remains as a document, which simply plays the role of the mythological foundation of legitimation, leading to the thwarting of its perception as a living document. Since the restoration of independence, every attempt of its analysis is marked by this factor. The undertaken analytical work is limited by the modern perspective and the theoretical framework of liberalism. The supreme law of the First Republic does not succumb easily to these methodological tools, which makes it impossible to study the importance and the basis of the document, as well as its relation to the epoch of that time thoroughly. The present article aims to eradicate this flaw.

The debates held on the constitutional issues at that time, as well as the final documents reveal clearly that the founders made the choice in favor of the direct democracy. This model is based on the unity of citizens and the state (and is thus opposed to the liberal theory, which conceptualizes the two as antagonistic elements) and aspires to implement this model through the application of specific mechanisms. In this system, a voter plays an important role in everyday politics and its role is not circumscribed to voting in periodic elections, whereas the electoral and institutional systems themselves are organized in a way to maximally simplify it for the public to wield influence on political processes. The most interesting part is the fact that the Georgian Mensheviks did not simply chose a theoretical model and mechanically transplanted it in Georgia, but they adjusted it to the existing context, provided critical analysis and developed it further.

Thus, the present essay analyzes the Constitution of 21 February 1921 through the theoretical framework of direct democracy. And for this purpose, it will employ the methods of logical analysis, historical and comparative research and will be based on the scholarship, historical sources, normative and archive materials. In this respect, the present article aims to make the long, polyphonic and dynamic process of the drafting

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of the Constitution understandable for the reader; to show the context and the paths leading to specific decisions, some of which are simple, straightforward and clear, and some are winding, untraveled and one might even say, dangerous.

I. INTRODUCTION

One century has passed since the adoption of the Constitution of Georgia of 21 February 1921. From today's vantage point, where the patriotic romanticism, that has been blurring the perception of the First Republic for decades is slowly disappearing and the fog fed by the totalitarian reaction, thwarting the objective analysis of this event, is dispersing, the researcher is put in a favorable position to understand the logic of the political order established by the supreme law of that time.

The foremost error made in discussions about the first Constitution is related to the terms of its legal effect. It is assumed, that the comprehensive analysis of this document is hindered by the shortness of the time between its adoption and its factual suspension. This attitude misses one important factor: throughout the three-year period from the gaining of independence until 21 February 1921, i.e. the time when the Constitution was formally approved, the political order had started to form step-by-step, which was essentially constitutionalized by the Constituent Assembly four days prior to the Occupation.

This document had a strange fate. At different times, different governments had brought it into force three times, however, it has never had actual legal effect in practice. At first, it entered into force on 21 February 1921, but soon afterwards the sovietization destroyed the ideals enshrined in the document. After seven decades, on 9 April 1991, the Supreme Council of the Republic of Georgia adopted the Act of Restoration of Independence of the Georgian State, which declared that the 1921 Constitution was still legally valid at the time, however, in reality the 1978 Soviet Constitution continued to be in force (with certain amendments). Later on, after a *coup d'état*, the Military Council of the Georgian Republic issued a declaration on 21 February 1992, which declared the restoration of the first Constitution, however, it did not entail any actual legal consequences. Although this was the last attempt of bringing the first Georgian Constitution into force, its struggle for self-establishment in the Georgian legal realm has not stopped.

On 25 March 1993, the State Constitutional Commission was formed and it was assigned with the task to develop the revised version the 1921 Constitution of the First Republic.¹ However, at the end the Commission and then the Parliament created a

¹ Demetrashvili A., Kobakhidze I., Constitutional Law, 2010, p. 59 (in Georgian).

totally different document (The Georgian Constitution of 24 August 1995), which only stated in its preamble, that it was based on the ‘basic principles of the 1921 Constitution of Georgia’. In spite of the fact, that the 1995 Constitution has formally borrowed quite a lot from its predecessor (from structural or normative perspective), their underlying logics differed substantially in view of the form of government, as well as the political role assigned to the citizens and the social-economic system. In 2010, another reform of the Constitution of Georgia was carried out. On 15 December, the legislature adopted amendments to the supreme law, which distanced this document even further from the spirit of the First Republic. The preamble was also modified. From that moment, the supreme law was based not on ‘principles’ anymore, but on ‘historical-legal legacy of the 1921 Constitution’. Moreover, a whole range of steps were taken, which contradicted the values of the first Constitution – on one hand, these steps obstructed the establishment of social justice; on the other hand, they diminished the power of people. The last attack on the century-old achievement was made by the constitutional reform of 2016-2018. It reduced the safeguards and values surviving from the earlier document even further.

In the context of such reduction, the first Constitution remains as a document, which only plays the role of the mythological foundation of legitimation, leading to the thwarting of its perception as a living document. Since the restoration of independence, all the attempts at its analysis are marked by this fact. These studies fail to revitalize the document in the context, in which it originated. Hence, the their work is limited by the contemporary perspective and the liberal theoretical framework. The problem with this approach is the fact that these methodological tools are not easily applicable to the supreme law of the First Republic, which makes it impossible to study the importance of this document, its basis and relation to the epoch of that time thoroughly. The present article aims to address this flaw.

It is clear from the discussions on the constitutional issues of that time (sittings of the Constitutional Commission, debates in the Constituent Assembly, articles, translations, presentations), as well as from the final document, that the founders made a decision in favor of direct democracy. This model is based on the unity of citizens and the state (in contrast to the liberal theory, which considers the two as adversarial elements) and tries to implement this vision through the special mechanisms. Here, the voters play an important role in everyday politics and their role is not limited to voting in the periodic elections. Meanwhile, the electoral and institutional systems are arranged in the manner, that maximally simplifies it for the public to wield influence on the political processes. The most interesting part is that Georgian Mensheviks did not simply take the theoretical model and tried to mechanically transplant it in practice, instead, they tried to fit the model to the present context, they also critically reviewed and developed it further.

The choice of the Georgian Social Democrats was mostly determined by their quarter-century long work experience. In this respect, the experience of a short-lived self-government in Guria and other territories of Georgia in the first years of the 20th century, as well as the party system based on local initiatives and the ideological tenets of the party, which were always tilted towards self-government, are noteworthy.

Thus, the present essay studies the Constitution of 21 February 1921 through the theoretical framework of direct democracy. For this purpose, it applies logical analysis, historical and comparative research methods and is based on the academic research, historical sources, normative and archive materials. In this respect, this article aspires to familiarize the reader with the long, polyphonic and dynamic process of the drafting of the Constitution, in order to show them the context and the paths leading to specific decisions, some of which are simple, straightforward and clear, and some of which – winding, untraveled and one might even say, dangerous. The present text aspires to be a guide in the labyrinth, the heart of which holds the lock to the first Constitution of Georgia, unlocking of which takes three keys. The first one covers the ideas: the framers of the supreme law applied *Marxism* as a theoretical foundation. At the same time, they referred to the works of the researchers of the political science at that time, especially the works of *Julius Hatschek*. The second key is comparativism: in this regard, the Georgian Social Democrats' interest towards the Swiss experience was unparalleled by any other legal system. The Georgian leftists chose the Swiss system as a model. The third key is the theoretical visions of the authors of the Constitution, whereby particular attention should be paid to *Rajden Arsenidze*, who was the Chairperson of the Constitutional Commission at first and the Minister of Justice later on. He prepared the drafts of the most complex chapters of the Constitution, dedicated to the Parliament and the Government and even prepared a commentary on them. He was the first one to develop the idea of integrating political liability mechanism of the government, as a characteristic institution of the parliamentary republic, into the model of direct democracy. In view of the theoretical framework applied at that time, this was a breakthrough, which opened completely new prospects for this government form. The process of putting this vision on the right path and its adequate incorporation within the unified structure of the Constitution should be credited to *Noe Zhordania* – his speech of 4 December 1920 completely changed the logic of the draft presented to the Constituent Assembly (which was tilted towards the liberal conception of parliamentarism) and returned it within the framework of direct democracy. Naturally, there were other more or less important contributors as well, that will be discussed in further detail in the article below.

As the present study has a primary goal to provide an authentic interpretation of the political system of the First Republic of Georgia, it is indispensable to review the foundations in the first place, i.e. what the Constitution of 21 February 1921 was built on.

II. THE MARXIST TAXONOMY OF THE REPUBLICAN FORMS OF GOVERNMENT

Karl Marx considered that the republican form of government allowed to serve the bourgeoisie, as well as the social goals. It needs to be ascertained, which type of agencies ensure state functioning. *Karl Marx* offers to base the classification of the republican states according to their goals, whether these goals are bourgeois or social.² In the „Eighteenth Brumaire of Louis Bonaparte’, *Karl Marx* further elaborates on this taxonomy and identifies three forms of republican government: social, democratic and parliamentary.³ First of these is proletarian, the second – *petite bourgeois*, while the third is bourgeois⁴ (this opinion is shared by the Georgian Social Democrats as well;⁵ *Rajden Arsenidze* made a minor modification to this theory, as he differentiated among three forms of republics – aristocratic, bourgeois–liberal and democratic⁶). As an example of the latter, he demonstrates the example of a constitutional, i.e. parliamentary republic, that has enabled the domination of the bourgeoisie.⁷ Democratic republic, where proletariat and *petite bourgeoisie* have a coalition, constitutes a compromise variant, which deprives the social demands of the proletariat of its revolutionary sharpness in exchange for the democratic direction. Meanwhile, the democratic demands of the *petite bourgeoisie* are not limited to the political form and include social issues as well.⁸ The suggestion of *Karl Kautsky*, that the ‘proletariat needs democracy’⁹ is also fed from the above-mentioned *Marxist* thesis. The Georgian Social Democrats chose this form of government. *Pavle Sakvarelidze* considered the democratic republic (in this case it is same as direct democracy) to be an appropriate form to fill in the substance of the socialist society,¹⁰ as the democratic republic presented the best expression of the principle of ‘self-government and domination of the people’.¹¹ The

² *Marx K.*, The Class Struggle in France, 1848-1850, in: *Marx K., Engels F.*, Selected Works, Volume I, 1963, pp. 161-162.

³ *Marx K.*, The Eighteenth Brumaire of Louis Bonaparte, in: *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 365.

⁴ *Marx K.*, The Eighteenth Brumaire of Louis Bonaparte, in: *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 365.

⁵ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 72 (in Georgian).

⁶ *Arsenidze R.*, Democratic Republic, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 44 (in Georgian).

⁷ *Marx K.*, The Eighteenth Brumaire of Louis Bonaparte, in: *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 299.

⁸ *Marx K.*, The Eighteenth Brumaire of Louis Bonaparte, in: *Marx K., Engels F.*, Selected Works, Volume I, 1963, pp. 300-301.

⁹ *Kautsky K.*, Georgia. Social-Democratic Republic of Peasants. Impressions and Observations, 2018, p. 95.

¹⁰ *Sakvarelidze P.*, For the Constituon of Georgia, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 327 (in Georgian).

¹¹ The Constituent Assembly (the 26th Sitting of November), Discussion of the Draft Constitution of

Socialist Revolutionary, *Ivane Cherkezishvili* also supported the democratic republic and criticized the parliamentary form of government.¹² In his speech of August 1918, *Noe Zhordania* devoted extensive explanation to this choice of the Georgian Socialists. Referring to *Karl Kautsky*, he gave reasons to demonstrate the advantages of the strategy of a gradual transition to the ‘social ground of the society’.¹³ *Rajden Arsenidze* aimed to pursue the same goal: he aspired to prepare the ground for the future socialist order.¹⁴ *Akaki Chkhenkeli* was driven by the same aspiration.¹⁵

Noe Zhordania believed, that the ‘state has no inherent goals, the state goals are provided by the classes, which dominate it’ and that ‘the state works in the interests of the classes, which are controlling it’.¹⁶ However, it may happen occasionally, that the ‘controllers of the state’ and the organization of the state are not aligned. This leads to a conflict between state goals and opportunities for their fulfillment.¹⁷ It is necessary to avoid such a conflict,¹⁸ the only way for which is to act within the limits of historical opportunity.¹⁹ This entails the following perspective: to build a state, ‘which will do as much as possible in the interests of those who possess little or no property’.²⁰ The first step of this strategy was to establish the democratic form of government, without

Georgia, in: *Jgerenaia E., Kenchoshvili T.* (eds.), *The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II*, 2018, pp. 580-581 (in Georgian).

¹² Meeting of the Constitutional Commission, 11 June 1918, *The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I*, 2015, p. 28 (in Georgian).

¹³ *Zhordania N.*, *Social Democracy and Organization of the Georgian State*, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), *The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I*, 2015, p. 60 (in Georgian).

¹⁴ Discussion of the Constitution in the Constituent Assembly, Sitting of 17 December, Speech of *R. Arsenidze*, *The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II*, p. 632 (in Georgian).

¹⁵ Discussion of the Constitution in the Constituent Assembly, Sitting of 17 December, Speech of *A. Chkhenkeli*, *The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II*, pp. 672-673 (in Georgian).

¹⁶ *Zhordania N.*, *Social Democracy and Organization of the Georgian State*, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), *The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I*, 2015, p. 61 (in Georgian).

¹⁷ *Zhordania N.*, *Social Democracy and Organization of the Georgian State*, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), *The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I*, 2015, p. 61 (in Georgian).

¹⁸ *Zhordania N.*, *Social Democracy and Organization of the Georgian State*, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), *The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I*, 2015, p. 62 (in Georgian).

¹⁹ *Zhordania N.*, *Social Democracy and Organization of the Georgian State*, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), *The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I*, 2015, p. 61 (in Georgian).

²⁰ *Zhordania N.*, *Social Democracy and Organization of the Georgian State*, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), *The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I*, 2015, p. 62 (in Georgian).

which reaching the ‘kingdom of socialism’ would not be possible.²¹ In the words of *Karl Kautsky*, one can synthesize democratic republic with socialism.²² Naturally, the end goal was to create a socialist republic.²³

Referring to *Karl Marx*, *Noe Zhordania* criticized the parliamentary republic, which is characterized by the consolidation of power (legislative, executive and judicial) in the hands of the parliament or the bourgeoisie.²⁴ *Pavle Sakvarelidze* also shared this opinion.²⁵ *Noe Zhordania* believed, that under the parliamentary system, as power is delegated from the people to the parliament, popular sovereignty is transformed into the sovereignty of the dominant class.²⁶ Such a concentration of power rules out the involvement of masses of the public in the government of the state. People are deprived of the opportunity to self-govern and this opportunity is transferred to the bourgeoisie. In contrast to this, in the democratic republic, through the multifarious elections on one hand and through the application of the tools of direct democracy on the other, people are involved in the government; people also control the institutions, which fall outside the jurisdiction of the parliamentary majority.²⁷ Through the application of these three mechanisms, people manage to have the final say in the political processes. Thus, for *Noe Zhordania* the democratic republic differed from the parliamentary republic by the fact that the legislative body is not the only one holding political power, instead, it shares the instruments of political administration with the people.²⁸ This

²¹ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, pp. 60-61 (in Georgian).

²² *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 72 (in Georgian).

²³ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 79 (in Georgian).

²⁴ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, pp. 72-73 (in Georgian). He repeated the theses stated here, word by word at the 1 December sitting of the Constituent Assembly, which he addressed about the Constitution on behalf of the Social-Democratic Party and the Faction. See the Speech of the Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, pp. 602-605 (in Georgian).

²⁵ *Sakvarelidze P.*, For the Constitution of Georgia, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 114 (in Georgian).

²⁶ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 80 (in Georgian).

²⁷ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 75 (in Georgian).

²⁸ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia*

reduces the influence of the bourgeoisie in the governing process.²⁹ The opinion of the Socialist Federalist *Samson Dadiani* concurred with the vision of *Noe Zhordania*, as he distinguished parliamentarism and democratism and considered the latter form as the outcome of popular or „non-intermediary democracy‘.³⁰ In this step-by-step manner, the Georgian Socialists logically developed the concept of non-intermediary democracy, as the leftist solution to the problem of the form of government.

III. THREE MODELS OF THE FORM OF GOVERNMENT

Prior to the definition of non-intermediary democracy, the theory existing at the beginning of 20th century should be reviewed, which underlays the discussions about the forms of government at that time in Georgia.

In 1919, the translation of one part of the book ‘Right of Modern Democracy’ of the German professor, *Julius Hatschek* was published as a series of letters in the newspaper ‘Republic of Georgia’.³¹ This book was greatly influenced the framers of the Constitution. *Julius Hatschek* was directly quoted by the Chairperson of the Constitutional Commission and one of the framers of the Constitution, *Pavle Sakvarelidze*.³² His influence is tangible elsewhere as well. Therefore, studying the opinions of *Julius Hatschek* is the crucial task of the present article.

The above-mentioned taxonomy, the general account of the republican forms of government is provided through the analysis of the specific legal institutions by *Julius Hatschek*. Based on the rich comparativist materials, *Julius Hatschek* distinguished between three types of a republic: 1. The Swiss, non-intermediary (direct) democracy; 2. The French parliamentary democracy; 3. The American democracy with the separation of powers.³³ Based on specific criteria, *Julius Hatschek* provided a road-map, via which a reader could understand the essence and the belonging of a specific political system.

The idea of non-intermediary democracy has its roots in the theory of the social contract of *Jean-Jacques Rousseau*. It should be underscored from the very beginning, that he

E., Kenchoshvili T. (eds.), *The Constitution of the First Republic of Georgia* (1921), Materials and Documents, Volume I, 2015, p. 75 (in Georgian).

²⁹ *Zhordania N.*, *Social Democracy and Organization of the Georgian State*, 4 August, 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), *The Constitution of the First Republic of Georgia* (1921), Materials and Documents, Volume I, 2015, p. 76 (in Georgian).

³⁰ *Dadiani S.*, *Our Constitution – Viewed in the Light of the Right to People’s State*, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 263 (in Georgian).

³¹ *Hatschek J.*, *Right to Modern Democracy*, 2016, p. 4.

³² *Sakvarelidze P.*, *For the Constitution of Georgia*, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 309 (in Georgian).

³³ *Hatschek J.*, *Right to Modern Democracy*, 2016, p. 16.

accepted representation as a way of decision-making in addition to the mechanisms of direct involvement of the people. Furthermore, ‘We already see in *Jean-Jacques Rousseau*’s work that legislature is the body of the general will and is almost equal to the sovereign’.³⁴ However, in order to balance out the power of representatives, the referendum³⁵ and the right to popular initiative³⁶ are also established.

In non-intermediary democracy the proportional electoral system dominates. In this state, if citizens themselves are not able to directly participate in the government of a political unity, they should at least be involved indirectly by using their voting rights.³⁷ *Julius Hatschek* believes, that the ‘majoritarian representation involves only part of the society in the work of legislature, only the proportional representation transforms the legislature into a scale-down community’.³⁸ This is ensured by the proportional representation principle, under which each group of the society is represented ‘in place of its numerical power’.³⁹

Jean-Jacques Rousseau’s conception looks like the separation of powers, however, there is a difference, as for him it is the outcome of subordination: the executive branch is subordinated to the omnipotent legislative power (which expresses the ‘general will’ – *volonté générale*).⁴⁰ Here, trust towards the legislative branch and distrust towards executive branch prevails.⁴¹ There is the unicameral legislative branch⁴² that ‘adopts laws, and protects them, i.e. it supervises the executive branch’.⁴³ The executive power belongs to the collegium (*pouvoir directorial*).⁴⁴ However, ‘purely administrative decisions are made by individual members of the collegium and they are formally approved by the collegium’.⁴⁵ It is the ‘servant agency’ of the parliament.⁴⁶ There is no political liability of government, as it only ‘discloses decisions’⁴⁷ of the representative body and has no political actorship

Under this system, the judges are appointed by the legislative branch.⁴⁸

³⁴ *Hatschek J.*, *Right to Modern Democracy*, 2016, p. 51.

³⁵ *Hatschek J.*, *Right to Modern Democracy*, 2016, p. 29.

³⁶ *Hatschek J.*, *Right to Modern Democracy*, 2016, p. 69.

³⁷ *Hatschek J.*, *Right to Modern Democracy*, 2016, p. 137.

³⁸ *Hatschek J.*, *Right to Modern Democracy*, 2016, p. 137.

³⁹ *Hatschek J.*, *Right to Modern Democracy*, 2016, p. 137.

⁴⁰ *Hatschek J.*, *Right to Modern Democracy*, 2016, p. 20.

⁴¹ *Hatschek J.*, *Right to Modern Democracy*, 2016, p. 49.

⁴² *Hatschek J.*, *Right to Modern Democracy*, 2016, p. 29.

⁴³ *Hatschek J.*, *Right to Modern Democracy*, 2016, p. 27.

⁴⁴ *Hatschek J.*, *Right to Modern Democracy*, 2016, p. 28.

⁴⁵ *Hatschek J.*, *Right to Modern Democracy*, 2016, p. 85.

⁴⁶ *Hatschek J.*, *Right to Modern Democracy*, 2016, p. 51.

⁴⁷ *Hatschek J.*, *Right to Modern Democracy*, 2016, p. 89.

⁴⁸ *Hatschek J.*, *Right to Modern Democracy*, 2016, p. 100.

The concept of parliamentary democracy was developed by *Lucien-Anatole Prevost-Paradol* in 1869.⁴⁹ It is based not on the separation of powers, but on the mixing of powers instead.⁵⁰ The head of the state, the president is elected by the representative body.⁵¹ The head of the state can dissolve the parliament (this institution is consistent with referendum and balances out the legislative power).⁵² The legislative branch (its majority⁵³) has the power to approve and dismiss the government.⁵⁴ However, the ministers are also accountable to the president.⁵⁵

The judiciary is formed by the executive branch.⁵⁶

Democracy with the separation of powers is based on the teachings of *Charles-Louis Montesquieu*.⁵⁷ Under this model, the legislative branch is the most inclined towards the usurpation of power.⁵⁸ The president is elected directly⁵⁹ and leads the executive branch single-handedly⁶⁰ (however, there are some honorable administrative issues that require the senate's approval⁶¹). They appoint and dismiss ministers,⁶² who are their proxies⁶³ and are not subject to the confidence vote or the no-confidence vote.⁶⁴ The first person in the state has no power to dissolve the legislative body, however, they enjoy the veto power.⁶⁵ This is why the referendums are not allowed in this system.⁶⁶ Constitutional review is also available here as a functional alternative of the referendum and the dissolution of the legislative body.⁶⁷

The judges are elected by the people.⁶⁸

The modern liberal constitutionalism merged the first model with the second and the third models. Such an assimilation led to its practical disappearance.

There are three differences between the liberal and no-intermediary democracy.

⁴⁹ *Hatschek J.*, Right to Modern Democracy, 2016, p. 20.

⁵⁰ *Hatschek J.*, Right to Modern Democracy, 2016, p. 22.

⁵¹ *Hatschek J.*, Right to Modern Democracy, 2016, p. 80.

⁵² *Hatschek J.*, Right to Modern Democracy, 2016, p. 26.

⁵³ *Hatschek J.*, Right to Modern Democracy, 2016, p. 84.

⁵⁴ *Hatschek J.*, Right to Modern Democracy, 2016, p. 25.

⁵⁵ *Hatschek J.*, Right to Modern Democracy, 2016, p. 88.

⁵⁶ *Hatschek J.*, Right to Modern Democracy, 2016, p. 100.

⁵⁷ *Hatschek J.*, Right to Modern Democracy, 2016, p. 17.

⁵⁸ *Hatschek J.*, Right to Modern Democracy, 2016, p. 18.

⁵⁹ *Hatschek J.*, Right to Modern Democracy, 2016, p. 80.

⁶⁰ *Hatschek J.*, Right to Modern Democracy, 2016, p. 78.

⁶¹ *Hatschek J.*, Right to Modern Democracy, 2016, p. 79.

⁶² *Hatschek J.*, Right to Modern Democracy, 2016, p. 87.

⁶³ *Hatschek J.*, Right to Modern Democracy, 2016, p. 25.

⁶⁴ *Hatschek J.*, Right to Modern Democracy, 2016, p. 26.

⁶⁵ *Hatschek J.*, Right to Modern Democracy, 2016, p. 26.

⁶⁶ *Hatschek J.*, Right to Modern Democracy, 2016, p. 71.

⁶⁷ *Hatschek J.*, Right to Modern Democracy, 2016, p. 74.

⁶⁸ *Hatschek J.*, Right to Modern Democracy, 2016, p. 100.

The first and crucial thesis of the non-intermediary democracy is the unity of the people and the government, which was essentially excluded by the liberal theory, which positions an individual and the state as antagonistic actors.

The second one is the ‘division of power’. In the non-intermediary democracy the executive branch is subordinated to the legislature and there is no horizontal relationship (coordination) between them, which is the case in *Charles-Louis Montesquieu’s* conception or as it is arranged in the ‘mixed’ model of *Lucien-Anatole Prevost-Paradol* (no separation of powers applies here, which leads to the risk of the power usurpation by the parliament.)

According to the third thesis, people have the final say, while under the other systems, this power belongs to the representatives of the people.

The third thesis was reviewed extensively in the previous chapter. This is only the first and the second postulates will be reviewed below.

IV. THE STATE AND THE PEOPLE

The typical error made by a researcher, who thinks within the box of a modern state, is to conceptualize the state and the individual as two opposing concepts. It seems that the hostility between these two is inevitable. However, this opposition is not so old; it only goes back to the past few centuries and was brought up in arguments first by *Jean-Jacques Rousseau* and later by *Karl Marx*.

The Swiss diplomat, *Paul Widmer* distinguishes the attitude of the Swiss people towards the community from their attitude towards the state. ‘They perceive themselves as the legislators and the government in a specific community’,⁶⁹ but in case of the state ‘it is assumed, that one should always be alert with it’.⁷⁰ Whenever discussions about the split of the citizen and the state and the hostility between the two take place in a modern state, the Swiss example should always be paid attention to. It keeps the moment, from which the ancient idea of the unity of the state and the citizen starts to dissolve - the point, which was sought by *Jean-Jacques Rousseau* all his life, when he was trying to imagine the social organization, which would not need a state, and the union of citizens, where the government and the citizen would not be estranged from each other.⁷¹

The socialist theory of the forms of government is concerned with this problem and keeps the parliamentary systems liable for it. As the latter empowers bourgeoisie, both

⁶⁹ *Widmer P.*, *Switzerland as a Special Case*, 2012, p. 156.

⁷⁰ *Widmer P.*, *Switzerland as a Special Case*, 2012, p. 156.

⁷¹ *Widmer P.*, *Switzerland as a Special Case*, 2012, p. 156.

politically and financially,⁷² it logically leads to the estrangement of the people and the government and the application of state power against the people.⁷³ *Noe Zhordania* referred to *Karl Marx*, when stating, that ‘under such conditions the public interest is detached from the society and opposes it, as the higher general interest’.⁷⁴ The solution is in the democratic republican⁷⁵ form of government, since the power essentially stays with the people here. The people maintain important levers in the instruments for decision-making. At the sitting of the Constitutional Commission, *Akaki Chkhenkeli* discussed mixing the tools of non-intermediary democracy with the representation principle. He stated, that although it turned out to be impossible to reach the original goal of the ‘execution of absolute power’ [sic] by the people, a mixed model was still agreed upon: the mixed model should be understood as a mix of direct democracy and representative democracy, which results in non-intermediary democracy⁷⁶).⁷⁷ At the same sitting, the Social Democrat, *Mukhran Khocholava* termed this choice as ‘a synthesized system of the government’.⁷⁸ Here, the executive branch does not manage to consolidate the governing instruments, thus, it is forced to become a popular government.⁷⁹ This leads to the unity of the parliament and the people, the sovereign rule of the people, so that ‘it is hard to draw a demarcation line between them. The people and the government – this is one unit, with common will and unified action’.⁸⁰ *Akaki Chkhenkeli* thought

⁷² *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 73 (in Georgian).

⁷³ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 73 (in Georgian).

⁷⁴ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 73 (in Georgian).

⁷⁵ ‘Democratic republic’ and ‘non-intermediary democracy’ as forms of government are used synonymously in the discussions in the First Republic. They are used as synonyms in the present work, as well.

⁷⁶ In the present work, the term ‘direct democracy’ and its mechanisms is used to describe the people, who govern themselves without representatives, whereas ‘non-intermediary (direct) democracy’ is a form of government, where system is built in a way not to lose the natural link between the representative and the represented.

⁷⁷ Journal of the Sitting of the Constitutional Commission of the Constituent Assembly, 20 November 1920, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 574 (in Georgian).

⁷⁸ Journal of the Sitting of the Constitutional Commission of the Constituent Assembly, 20 November 1920, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 575 (in Georgian).

⁷⁹ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 80 (in Georgian).

⁸⁰ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 76 (in Georgian).

that the crucial feature of the model, established by the 1921 Constitution, did not just constitute a transformation of the state into an economic organization, but it also led to the full democratization of the government, i.e. the reinforcement of popular sovereignty in every sphere, the involvement of the people in the governing process and, thus, its merger with the official bodies.⁸¹ This is why *Pavle Sakvarelidze* stated at the presentation of the Draft Constitution to the Constituent Assembly: ‘The foundation of today’s Georgia is the rule of the people, the self-possession of the people.’⁸²

This essentially reminds us of *what Paul Widmer* stated with regards to the alliance contract of the Swiss confederates, that in contrast to any other two-part social contract (on one hand the agreement on the membership of a political union, on the other hand the agreement on domination), the execution of this agreement is not assigned to the dominant unit, but is rather declared as a common task.⁸³ According to the constitutional logic of the First Republic, it was the people who executed the power. Individuals were entitled to a whole range of mechanisms, which reduced the liberal paradigm of the separation of the citizen and the state to the maximum extent. The state agencies were maximally bound with liability and accountability to their constituencies and the public opinion had to transpire in the political processes. Finally, the laws adopted in line with the public opinion would be enforced by the people. This is how the non-intermediary democracy contradicted with what *Paul Widmer* termed as the ‘creeping process of the loss of the state’.⁸⁴ The direct democracy, in contrast to the parliamentary democracy, is more strongly focused on the public.⁸⁵

Rajden Arsenidze stated, that the existing system was not direct democracy. However, does this obstruct its identification as non-intermediary democracy? The answer can be found through the answer to another question, namely, to whom belongs the sovereignty? There is not much choice here, as at the end of the day ‘sovereignty is vested either in the people or the governing elite’.⁸⁶ *Rajden Arsenidze* responded to this question with arguments and asserted that the tools of exercising of the supremacy of the nation (people) are more democratic in Georgian model, than elsewhere.⁸⁷ In

⁸¹ Discussion of the Constitution in the Constituent Assembly, Sitting of 19 December, Speech of *A. Chkhenkeli*, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, pp. 672-673 (in Georgian).

⁸² Journal of the Sitting of the Constitutional Commission of the Constituent Assembly, 20 November 1920, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 579 (in Georgian).

⁸³ *Widmer P.*, Switzerland as a Special Case, 2012, p. 70.

⁸⁴ *Widmer P.*, Switzerland as a Special Case, 2012, p. 184.

⁸⁵ *Widmer P.*, Switzerland as a Special Case, 2012, p. 205.

⁸⁶ *Widmer P.*, Switzerland as a Special Case, 2012, p. 17.

⁸⁷ Discussion of the Constitution in the Constituent Assembly, Sitting of 17 December, Speech of *R. Arsenidze*, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 638 (in Georgian).

order to prove this, he mentioned three factors: 1. The organization of the executive branch; 2. The broad mandate of the legislature; 3. The relationship between the central government and local self-governments.⁸⁸ Each of these should be considered in detail.

V. THE ORGANIZATION OF THE EXECUTIVE BRANCH

1. THE SEPARATION OF POWERS (THE ROLE OF THE GOVERNMENT)

The attitude of non-intermediary democracy towards the concept of the separation of powers need to be reviewed at this point. It requires conferring unlimited power to the representative body, which enjoys public trust. That is why the idea of *Charles-Louis Montesquieu* does not work here. *Pavle Sakvarelidze* characterizes the system in this way: ‘In the relationship of the government and the parliament the principles of agreement and coordinated action do not apply [...]; the principle of domination [works] instead. In every aspect the government is subordinated to the parliament.’⁸⁹ He points to Switzerland as an example of this system.⁹⁰ The Socialist Federalists viewed the problem in the same light; *Samson Dadiani* stated before the Constituent Assembly, that the absolute separation of powers was unacceptable for his party.⁹¹ The whole constitutional system was arranged according to this principle: the people occupied the highest place and were followed by the parliament. The government looked so weak compared to the powers of the parliament, that one of the scholar in a reproaching manner stated: ‘the Constitution provided for an unusual system of government – essentially it consisted of two branches – the legislature and the judiciary. There was no strong executive branch, particularly not one that could stand on equal footing with the other two by its status, as it is the case in some democratic states.’⁹² In other words:

The system of government provided by the first Georgian Constitution may be included in the group of European type parliamentary systems, which was popular at that time. However, in view of its many features, we cannot say, that the Constitution provided for equally powerful three government branches, as it did not entrench perfected mechanisms of influence of the executive branch on the parliament or *vice versa*,

⁸⁸ Discussion of the Constitution in the Constituent Assembly, Sitting of 17 December, Speech of *R. Arsenidze*, *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume II, p. 638 (in Georgian).

⁸⁹ *Sakvarelidze P.*, For the Constitution of Georgia, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 313 (in Georgian).

⁹⁰ Meeting of the Constitutional Commission, 11 June 1918, *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume I, 2015, p. 26 (in Georgian).

⁹¹ Constituent Assembly, Sitting of 8 December, *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume II, p. 613 (in Georgian).

⁹² *Lee E.*, *The Experiment, The Forgotten Revolution of Georgia 1918-1921*, 2018, p. 252.

the mechanisms of influence of the parliament on the executive branch. Among the characteristics of the system of government, which distinguishes this constitutional model from other parliamentary systems of that time, is the absence of the neutral institution of the president (or the monarch in case of the constitutional monarchy), the entrenchment of only individual liability of the government members, the absence of power of the government to dissolve the parliament during crises, etc.⁹³

All these concerns are invalidated after the realization of one conceptual issues. It is related to the *Marxist* understanding of the form of government, which opposes the parliamentary model and is similar to the Swiss system, which was adjusted to the Georgian context and improved by the Georgian Social Democrats. Naturally, something that is not a parliamentary model, will also not fit within its framework (even though, some scholars categorized the 1921 model as a super-parliamentary system⁹⁴). This is not an unsuitable criterion, it cannot measure the Constitution of the First Republic. This system should be viewed through the concept of non-intermediary democracy.

2. POLITICAL RESPONSIBILITY OF THE EXECUTIVE BRANCH

In his work ‘Civil War in France’, *Karl Marx* did not hide his sympathies for the Paris Commune, when he describes the aspiration of the ‘*communards*’ to organize a new republic. This account reveals his critical opinion of the *Charles-Louis Montesquieuan* idea of the separation of powers. This is a rare case, when *Karl Marx* focuses on the relationship between the legislative and the executive branches and prefers a structure with unified legislative and executive powers, where the relationships between the political branches, characteristic to parliamentary republics, is absent. ‘Commune was not meant to be a parliamentary institution, but rather a working corporation, which would be the legislator and the executor of laws at the same time’- he wrote.⁹⁵ *Karl Marx* alludes here to the specific arrangement of the Commune, which distinguished it from the parliamentary system. The Commune formed ten commissions out of its composition,⁹⁶ each of them consisting of 5-8 members.⁹⁷ ‘It constituted the genuine government of the Commune.’⁹⁸ As early as June 1918, at the outset of the discussions on the Constitution, *Noe Zhordania* was advocating the idea, which was very close

⁹³ *Papuashvili G.*, 1921 Constitution of the Democratic Republic of Georgia: Looking Back after Ninety Years, in: ‘1921 Constitution of the Democratic Republic of Georgia’, 2nd edition, 2013, p. 20 (in Georgian).

⁹⁴ *Gegenava D., Papashvili T., Vardosanidze K., Goradze G., Bregadze R., Tevzadze T., Tsanava T., Javakhishvili P., Macharadze Z., Sioridze G., Loladze B.*, Introduction to the Constitutional Law of Georgia, 2019, p. 41 (in Georgian).

⁹⁵ *Marx K.*, The Civil War in France, in: *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 599.

⁹⁶ *Mtvarelidze D.*, The Paris Commune, 2nd revised edition, 1931, p. 60 (in Georgian).

⁹⁷ *Mtvarelidze D.*, The Paris Commune, 2nd revised edition, 1931, p. 60 (in Georgian).

⁹⁸ *Mtvarelidze D.*, The Paris Commune, 2nd revised edition, 1931, p. 60 (in Georgian).

to that of the organization of the Commune. He thought that the Parliament had to be assigned with both the legislative and the executive powers and functions.⁹⁹

To better understand the system implied by *Karl Marx* under the ‘parliamentary institution’, the main feature characterizing this system, that is the conceptualization of the cabinet as a political unit, should be mentioned. There is also an opposing opinion, that the government is the technical executor of the decisions of the legislature and its separation as a different constitutional institution does not in any way imply its political actorship.

In the often-quoted speech of 1918 by *Noe Zhordania*, he clearly distinguished between two types of government. In his opinion, the democratic form of republican government is characterized by the non-political nature of the government, which serves to weaken the parliamentary majority and the bourgeoisie.¹⁰⁰ The parliamentary cabinet depends on the majority, which is ever-changing¹⁰¹ and is subordinated to it only. In contrast to this, in a democratic republic the cabinet is a ‘working collegium’.¹⁰² It is subordinated not only to the representatives of the people, but also to the decisions of the people and this subordination is unconditional.¹⁰³ This principle is also discussed by *Rajden Arsenidze* in the commentary to the Draft Constitution. He asserted, that the draft was based on the principle of government subordination to (i.e. the execution of instructions of) the parliament.¹⁰⁴ *Noe Zhordania* noted additionally, that government cannot organize itself without the people, it can neither act against the interests of the people.¹⁰⁵ This is due to the fact that there is a link between the people and the government. The government is not dissolved according to the political opinions of the majority, but for the work-related

⁹⁹ Sitting of 22 June 1918 of the Constitutional Commission, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, p. 31 (in Georgian).

¹⁰⁰ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 76 (in Georgian).

¹⁰¹ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 76 (in Georgian).

¹⁰² *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 76 (in Georgian).

¹⁰³ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 76 (in Georgian).

¹⁰⁴ The Executive Power, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 849 (in Georgian). Presumably, this document is an explanatory note to the Sample Draft authored by *R. Arsenidze*.

¹⁰⁵ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 76 (in Georgian).

viewpoints instead.¹⁰⁶ In this system the cabinet does not change after the change of the majority.¹⁰⁷ Once appointed, the minister continues to work at the position until the next elections of the parliament.¹⁰⁸ For *Noe Zhordania*, they are ‘neither leaders, nor political statesmen’, they are only administrative officials.¹⁰⁹

Noe Zhordania spoke again on the relationship between the parliament and government after a year and a half in his speech of December 1920. Here, he elaborated on the difference between the dismissal of the government for political and work-related purposes. He thought, that dismissal of the government according to the will of majority is a characteristic of parliamentarism.¹¹⁰ In the commentary to the draft *Rajden Arsenidze* also referred to the accountability of the government to the parliament, as a feature of parliamentarism, when he was characterizing the entrenched system and thought, that this element distinguished the offered system from the Swiss model.¹¹¹

The second issue for *Noe Zhordania* is the procedure of the resignation of the government. In his opinion parliamentarism allows the opportunity for the government to resign for insufficient reasons. ‘Here, it is possible that the parliament approves of the general direction of the governmental policy, but sees an error related to the specific case and, as they say, if it reproaches the government using a specific formula, the government will have to resign.’¹¹² When he juxtaposes the parliamentarism with the example of Switzerland, *Pavle Sakvarelidze* also notes, that the government does not resign here, if its bill fails to be passed into law.¹¹³ *Noe Zhordania* believed, that neither the government, nor the individual minister had to resign, if only their isolated acts are criticized by the parliament. Dissolution is only an option, when the majority makes decision thereto.¹¹⁴

¹⁰⁶ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E.*, *Kenchoshvili T.* (eds.), *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume I, 2015, p. 76 (in Georgian).

¹⁰⁷ Sitting of 22 June, 1918 of the Constitutional Commission, *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume I, p. 31 (in Georgian).

¹⁰⁸ Sitting of 22 June, 1918 of the Constitutional Commission, *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume I, p. 31 (in Georgian).

¹⁰⁹ Sitting of 22 June, 1918 of the Constitutional Commission, *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume I, p. 31 (in Georgian).

¹¹⁰ Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume II, p. 606 (in Georgian).

¹¹¹ *The Executive Power*, *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume II, p. 849 (in Georgian).

¹¹² Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume II, p. 606 (in Georgian).

¹¹³ *Sakvarelidze P.*, For the Constitution of Georgia, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 314 (in Georgian).

¹¹⁴ Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume II, p. 606 (in Georgian).

When distinguishing parliamentarism from a democratic republic, it is decisive for *Noe Zhordania* to examine the interrelationship between these three issues:¹¹⁵ 1. general political direction, 2. individual practical issues and 3. governmental crisis.

In his opinion, if there is a consensus on the general political agenda in the democratic republic, different opinions on a specific issue cannot cause crisis.¹¹⁶ This is ensured by the so-called obedience principle, according to which the government is obliged to obey the resolution of parliament and to enforce it, regardless of whether it agrees with the parliament or not.¹¹⁷ On the other side, it is obligated to resign in case of such a conflict in parliamentarism, which leads to a crisis.¹¹⁸ *Noe Zhordania* concluded, that a democratic republic rules out the ‘crises principle’.¹¹⁹ The Social Democrat *Aleksandre Mdivani* also shared this opinion, that in a non-intermediary democracy the government does not have a political role, while on the other side, when there is a conflict of opinions, the government enforces the will of the parliament.¹²⁰ But what happens, if the government does not perform the assigned task? Criminal liability is an answer.¹²¹ This system does not constitute the separation of powers, but rather the ‘subordination of power’.¹²² At the top of the system are the people, that subordinate the whole state apparatus through the parliament and other institutions.

Noe Zhordania identifies a government composed of civil servants and the irremovability of ministers as the main characteristics of democratic regimes.¹²³ Switzerland is the example of the latter, where members of the federal council cannot be dismissed through

¹¹⁵ Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 606 (in Georgian).

¹¹⁶ Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 606 (in Georgian).

¹¹⁷ Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, pp. 606-607 (in Georgian).

¹¹⁸ Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 607 (in Georgian).

¹¹⁹ Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 607 (in Georgian).

¹²⁰ *Mdivani A.*, Government and Its Accountability, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 294 (in Georgian).

¹²¹ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, pp. 83-86 (in Georgian).

¹²² *Sakvarelidze P.*, Letters on the Political Order of Different Countries, p. 126 (in Georgian).

¹²³ Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 608 (in Georgian).

the no-confidence vote.¹²⁴ *Pavle Sakvarelidze* also referred to Switzerland, when he wrote, that here the ‘government is not politically accountable [...]. Until the end of the office the government or its member cannot be dismissed [by the Parliament]’.¹²⁵ The reason therefor is that the government i.e. the federal council is an administrative body.¹²⁶ This is confirmed by *Paul Widmer*, who wrote the following: the government of Switzerland is just an administration.¹²⁷ In a direct democracy, people govern, while the government is composed of temporary advisors. However, *Noe Zhordania* thought, that the purely Swiss model would not fit Georgia and a political government was needed instead of a government of civil servants.¹²⁸ He pointed to the special foreign policy challenges as an argument.¹²⁹ *Akaki Chkhenkeli* essentially shared this opinion.¹³⁰ Nonetheless, *Noe Zhordania* believed, that Georgia had to adopt the Swiss experience relating to the head of government. The government had to have a chairperson, who would supervise the performance of duties by the ministers.¹³¹ From here he inferred the idea, that he offered to the Constituent Assembly. According to this idea, the chairperson of the government had to be elected for a certain term of office, during which they could not be held politically accountable.¹³² ‘The ministers may change, or all of them may leave, but one person, with the functions of the president, the representative of the state, has to remain in office.’¹³³ This stance was also taken by *Akaki Chkhenkeli*, however, he noted that the draft already entrenched accountable government and unaccountable chairperson of the government.¹³⁴ A Regulation different from this vision is provided

¹²⁴ *Haller W.*, *The Swiss Constitution in a Comparative Context*, 2012, pp. 160-161.

¹²⁵ *Sakvarelidze P.*, *Letters on the Political Order of Different Countries*, p. 124 (in Georgian).

¹²⁶ *Sakvarelidze P.*, *Letters on the Political Order of Different Countries*, p. 124 (in Georgian).

¹²⁷ *Widmer P.*, *Switzerland as a Special Case*, 2012, p. 232.

¹²⁸ Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume II, p. 609 (in Georgian).

¹²⁹ Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume II, p. 609 (in Georgian).

¹³⁰ Discussion of the Constitution in the Constituent Assembly, Sitting of 17 December, Speech of *A. Chkhenkeli*, *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume II, p. 662 (in Georgian).

¹³¹ Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume II, p. 608 (in Georgian).

¹³² Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume II, p. 608 (in Georgian).

¹³³ Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume II, pp. 608-609 (in Georgian).

¹³⁴ Discussion of the Constitution in the Constituent Assembly, Sitting of 17 December, Speech of *A. Chkhenkeli*, *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume II, p. 670 (in Georgian).

in the draft that was submitted to the Constituent Assembly in May 1920, where the government (including the prime minister) is subject to the political no-confidence vote as a body,¹³⁵ while the term of office of the chairperson of the government is not determined.¹³⁶

The former President of the Constitutional Court, *Giorgi Papuashvili* thinks, that the Constitution provided for the individual liability of the chairperson of the government,¹³⁷ but in addition to the explanations above, the text of the Constitution itself reveals that the vision of *Noe Zhordania* got incorporated in the supreme law at the end, according to which the parliament could not dismiss the chairperson of the government,¹³⁸ in contrast to procedure of the no-confidence vote against individual ministers, in which case they are obliged to resign.¹³⁹ Thus, *Noe Zhordania's* vision was shared by the Constituent Assembly and the principle of political accountability of ministers was incorporated into the model of direct democracy. According to this model, the relationship of the chairperson of government with the parliament was based on the 'obedience principle'. The Chairperson was obligated to enforce all the resolutions of the Parliament,¹⁴⁰ whether they agreed with them or not. A disagreement would not automatically result in the resignation of the chairperson. It appears, that prior to the adoption of the Constitution, the same rule was applied in practice. As *Noe*

¹³⁵ Draft Constitution of Georgia adopted by the Constitutional Commission of the Constituent Assembly, May 1920, Article 83, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 442 (in Georgian).

¹³⁶ Draft Constitution of Georgia adopted by the Constitutional Commission of the Constituent Assembly, May 1920, Article 83, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 440 (in Georgian).

¹³⁷ *Papuashvili G.*, 1921 Constitution of the Democratic Republic of Georgia: Looking Back after Ninety Years, in: '1921 Constitution of the Democratic Republic of Georgia', 2nd edition, 2013, p. 26 (in Georgian).

¹³⁸ The systemic analysis of the Constitution reveals it. The Chapter V (Executive Power) provides the sequence of Articles regulating the Chairperson of Government, Deputy Chairperson, Government and Ministers. Article 70 applies to the Chairperson of Government and does not state anything related to their resignation mechanism. Article 71 applies to the Deputy Chairperson and it only states, that this person substitutes the Chairperson of the Government. Article 72 enlists the rights and duties of the Government. Article 73, Paragraph 1 applies to the Ministers. It states the following: 'Each member of the government manages independently, and under sole, personal responsibility to parliament, the department confided to him. He must resign as soon as he loses the confidence of parliament, as expressed in the explicit resolution.' It appears, that this provision does not apply to the Chairperson of the Government, as no department is confided to them. The word 'responsible' in Article 73, Paragraph 2, which describe the relationship between the Parliament and the Chairperson of Government also does not provide the possibility of political no-confidence and mostly refers to the principle of obedience, which implies legal responsibility.

¹³⁹ 1921 Constitution of Democratic Republic of Georgia, Article 73, Paragraph 1, Clause 2, available at: <<https://matsne.gov.ge/document/view/4801430?publication=0>> (accessed 15.7.2021).

¹⁴⁰ Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 609 (in Georgian).

Zhordania himself noted: ‘Often the government and I, your respectful servant, do not agree with your resolutions, but we execute them’¹⁴¹ (as in Switzerland, according to *Pavle Sakvarelidze*¹⁴²). It is interesting, that the obligation of the chairperson of government to change the minister (as part of the individual political accountability of ministers) at the demand of the parliament takes them out of the frames of the obedience principle i.e. out of democratism. This vision is also shared by *Rajden Arsenidze*, who considered the election of the chairperson of government by the parliament as the determination of political direction of the government by the parliament: ‘the chairperson of government should obey every decision of the parliament. The ministries follow this direction and in the process of enforcement they are politically accountable. [...] Every deviation from this policy, failure to enforce that political direction leads to accountability.’¹⁴³ This fact should not be ignored. Formally, political accountability is the tool of parliamentarism, however, its incorporation in the system of democratic republic transforms it to its core and detaches it from its roots. In parliamentarism political accountability empowers the government; it has the privilege of resignation in case of a disagreement, hence, it can thereby generate a crisis, which means that it can influence the parliament by blackmailing it with a crisis; in the Georgian model it is deprived of this leverage.

It is hard to pinpoint the precise time, when the ruling party gave consent to individual political accountability. Maybe, this modification of the system of government was shared by the Social Democrats due to the influence of *Rajden Arsenidze*’s old ideas. As early as 1917, he wrote that it necessary to have ministries, that would be elected from the composition of the parliament and would be accountable to the parliament, as in this case the parliament, and therethrough the people, will have both the legislative and the executive powers.¹⁴⁴ Thus, this tool of parliamentarism (political accountability) once introduced in the system of non-intermediary democracy, is merged with it and becomes its natural part. This does not generate a mixed system, which is partially parliamentarian and partially direct democracy, it constitutes full democratism instead, that becomes even more perfect through this addition. It subjects the government to the political will of the people even further and eradicates the flaw, expressed through the forced toleration of a useless minister until the end of their term in case of the fixed-term government. Presumably, The same reason served as a ground for

¹⁴¹ Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, *The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II*, p. 607 (in Georgian).

¹⁴² *Sakvarelidze P.*, *Letters on the Political Order of Different Countries*, p. 125 (in Georgian).

¹⁴³ Discussion of the Constitution in the Constituent Assembly, Sitting of 17 December, Speech of *R. Arsenidze*, *The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II*, p. 644 (in Georgian).

¹⁴⁴ *Arsenidze R.*, *Democratic Republic*, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 59 (in Georgian).

the negation of collective accountability and not, as part of the scholars argue, the absence of bicameralism or the non-existence of the office of the head of the state.¹⁴⁵

However, we should once again turn to this issue and review it in detail. It is noteworthy, that this stance of *Noe Zhordania* contradicts his original vision, that it was exactly the prime minister, to whom the political accountability principle had to be applied (together with the ministers of interior and foreign affairs).¹⁴⁶ *Noe Zhordania* presented this idea as a transitional measure.¹⁴⁷ It seems that, after a certain period, *Noe Zhordania* changed his position and leaned further towards the principle of democracy. In any case, in his speech of December 1920, he was clearly discontented with the submitted draft (which provided for collective accountability and no-confidence vote against the prime minister¹⁴⁸). He realized that his peers were driven in the direction of parliamentarism and he tried to return them to the old path. In his opinion, despite the fact that the principles of this vision were entrenched in the draft, results were not guaranteed and he reproached his fellows for their steps in the direction of parliamentarism¹⁴⁹, which was followed by an awful prediction: ‘If we will build the Constitution, as it is written here, within one month it will either ruin itself, or it will ruin the state.’¹⁵⁰ Therefore, the interpretation of this speech of *Noe Zhordania* in a way, that considers the December speech as a step away from the principle of the democratic republic towards parliamentarism, should be questioned.¹⁵¹ Actually, the very opposite of that is true.

It is interesting that the Socialist Federalist, *Samson Dadiani* opposed the individual accountability and called for collective accountability¹⁵², which was originally decided

¹⁴⁵ *Papuashvili G.*, 1921 Constitution of the Democratic Republic of Georgia: Looking Back after Ninety Years, in: ‘1921 Constitution of the Democratic Republic of Georgia’, 2nd edition, 2013, p. 27 (in Georgian); *Gegenava D., Kantaria B., Tsanava L., Tevzadze T., Macharashvili Z., Javakhishvili P., Erkvania T., Papashvili T.*, Constitutional Law of Georgia, 2nd edition, 2016, p. 40 (in Georgian).

¹⁴⁶ Sitting of 22 June, 1918 of the Constitutional Commission, The Constitution of the First Republic of Georgia (1921) Materials and Documents, Volume I, p. 31 (in Georgian).

¹⁴⁷ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 72 (in Georgian).

¹⁴⁸ Draft Constitution of Georgia adopted by the Constitutional Commission of the Constituent Assembly, May 1920, Article 83, Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 442 (in Georgian).

¹⁴⁹ Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 605 (in Georgian).

¹⁵⁰ Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 605 (in Georgian).

¹⁵¹ *Kantaria B.*, Principles of the Western Constitutionalism and Legal Nature of the Form of Government in the First Georgian Constitution, 2012, p. 144 (in Georgian).

¹⁵² The Constituent Assembly, Sitting of 8 December, The Constitution of the First Republic of Georgia

that way. The debates on this issue were held on 21 April 1920 in the Commission, where the chapter on government, prepared by *Rajden Arsenidze*, was discussed and it included the idea of collective accountability.¹⁵³ *Sergi Japaridze* advocated the model of unaccountable government, however, this idea was not accepted.¹⁵⁴ At the end of the discussion, the principle of collective accountability was maintained. In the explanatory note to the document, *Rajden Arsenidze* (who was presumably the author of this text) revealed the intention of the Constitutional Commission, ‘to subject the fate of the Cabinet to the majority vote in the Parliament’¹⁵⁵, which implied the sanction as an expression of the collective accountability.¹⁵⁶

In his address to the Constituent Assembly, discussing this issue *Akaki Chkhenkeli* focused on the obligation of the government to resign only if the issue of its collective accountability was raised by the parliament.¹⁵⁷ In his opinion this was an expression of the obedience principle,¹⁵⁸ while it was noted in the commentary to the draft, that the collectively accountable cabinet is a parliamentary cabinet,¹⁵⁹ which contradicts the direct democracy model of organization of executive power. ‘The direct democracy aspires to put the executive collegium composed of civil servants at the top of the government.’¹⁶⁰ Finally, *Rajden Arsenidze* concludes, that the draft proposes the mixed French-Swiss system, where parliamentarism is merged with direct democracy.¹⁶¹

The head of the Commission, *Pavle Sakvarelidze* believed, that mixing these two principles would provide the country with the best form of government,¹⁶² but it would

(1921), Materials and Documents, Volume II, pp. 615-616 (in Georgian).

¹⁵³ Executive Power, The Sample Draft of *R. Arsenidze*, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 848 (in Georgian).

¹⁵⁴ Journal of Sittings of the Constitutional Commission of the Constituent Assembly, 21 April 1920, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 381 (in Georgian).

¹⁵⁵ The Executive Power, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 864 (in Georgian).

¹⁵⁶ The Executive Power, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 864 (in Georgian).

¹⁵⁷ Discussion of the Constitution in the Constituent Assembly, Sitting of 19 December, Speech of *A. Chkhenkeli*, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 662 (in Georgian).

¹⁵⁸ Discussion of the Constitution in the Constituent Assembly, Sitting of 19 December, Speech of *A. Chkhenkeli*, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 662 (in Georgian).

¹⁵⁹ The Executive Power, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 860 (in Georgian).

¹⁶⁰ The Executive Power, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 849 (in Georgian).

¹⁶¹ The Executive Power, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 849 (in Georgian).

¹⁶² *Sakvarelidze P.*, For the Constitution of Georgia, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 318 (in Georgian).

tip the system towards the parliamentary model. *Pavle Sakvarelidze* elaborated on his opinions in 1920, when the draft was published and he advocated the need for collective accountability of the government, which was entrenched in the draft¹⁶³ (albeit, it was not included in the final text of the Constitution)¹⁶⁴. He believed that from the time of the gaining of independence until that moment, Georgia had a parliamentary government,¹⁶⁵ however, it was balanced through ‘the initiative of the referendum provided by the Draft Constitution, by the annual election of the chairperson, by granting the chairperson of government the role of a representative of the whole republic, by the prohibition of the consecutive re-election of the same person in the position of the chair of the government, etc’.¹⁶⁶ However, the principle of collective accountability had never been applied in practice in the First Republic, which is clear from the above-mentioned speech of *Noe Zhordania*. It appears that *Pavle Sakvarelidze* was not aligned with the theory of *Noe Zhordania* and *Rajden Arsenidze* at the end. The presence of theoretical disagreement was soon proved by the fact that at the beginning of 1921 *Pavle Sakvarelidze* left the Party and founded the ‘Independent Social Democratic Party - Ray’.¹⁶⁷

Critically has to be viewed the opinions of several contemporary authors as well: according to them, the founders of the First Republic ‘chose the path of parliamentarism’¹⁶⁸. They consider, that the ‘organization of state bodies is based [...] on parliamentarism – on the ideas of political accountability of government to the parliament and the supremacy of the parliament’.¹⁶⁹ Bolder legal assessments are also made: ‘Georgia at that time was a parliamentary republic’¹⁷⁰, but after the superficial review of the features of parliamentarism, in a few lines, this statement loses its persuasiveness and names the constitutional model of 1921 Constitution as ‘somehow close’ to the construction of

¹⁶³ *Sakvarelidze P.*, For the Constitution of Georgia, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 314 (in Georgian).

¹⁶⁴ According to *P. Sakvarelidze*, ‘Under our Constitution, the Government should be collectively accountable to the Parliament for the general policy [...] as it is stated in the Draft Constitution’. *Sakvarelidze P.*, For the Constitution of Georgia, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 316 (in Georgian). However, at the end the Constitution did not include the principle of collective accountability for the general policy.

¹⁶⁵ *Sakvarelidze P.*, For the Constitution of Georgia, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 316 (in Georgian).

¹⁶⁶ *Sakvarelidze P.*, For the Constitution of Georgia, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 315 (in Georgian).

¹⁶⁷ Collection of Biographies of the Deputies of the Constituent Assembly of the Democratic Republic of Georgia, available at: <<http://firstrepublic.ge/ka/biography/174>>, (accessed 1.7.2021).

¹⁶⁸ *Gegenava D., Kantaria B., Tsanova L., Tevzadze T., Macharashvili Z., Javakhishvili P., Erkvania T., Papashvili T.*, Constitutional Law of Georgia, 2nd edition, 2016, p. 39 (in Georgian).

¹⁶⁹ *Gegenava D., Kantaria B., Tsanova L., Tevzadze T., Macharashvili Z., Javakhishvili P., Erkvania T., Papashvili T.*, Constitutional Law of Georgia, 2nd edition, 2016, p. 41 (in Georgian).

¹⁷⁰ *Kantaria B.*, Principles of the Western Constitutionalism and Legal Nature of the Form of Government in the First Georgian Constitution, 2012, p. 10 (in Georgian).

the parliamentary government.¹⁷¹ This opinion is accurate, if the principle of political accountability of government to the parliament is considered as the main feature of parliamentarism,¹⁷² but it becomes false, when the attempt is made to frame the incorporation of the features of parliamentarism in the non-intermediary democracy model as a step towards the parliamentary republic. It does not account for the improvement, a step forward in the theory of non-intermediary democracy, which was emanated by the entrenchment of individual accountability of ministers.

The introduction of the ‘accountable government’ by the Social Democrats (in the form of the entrenchment of individual accountability of ministers, except for the chairperson of the government) was not a compromise; on the contrary, it was the strengthening of the direct democracy in view of the subordination of the government to the parliament. The functions of government, its ‘busy’ nature is what matters for the non-intermediary democracy and not, whether it will be politically accountable or not.

3. COLLEGIAL GOVERNANCE

In addition to subordination (domination), the direct democracy is characterized by another principle, namely, the power sharing, which *Paul Widmer* poses as a counterbalance to the separation of powers.¹⁷³ Here, the decisions are made collectively, which in its turn provides insurance for errors and ensures the sharing of responsibility. The invited member of the Constitutional Commission, *Konstantine Mikeladze* thought that collective decision-making (collegiality) is a characteristic for the executive power in those systems of government, ‘where people have direct and immediate influence on the granting of rights and the administration of the state’.¹⁷⁴

When choosing the non-intermediary democracy, the framers of the Constitution were fully aware of this factor. Two active members of the Constitutional Commission, *Rajden Arsenidze* (‘Our Constitution does not establish a personal organization, it founds only a collective organization’¹⁷⁵) and *Konstantine Japaridze* (‘Democratism requires collective rule and government. This system worked well with the hindsight of the last three years and it should be maintained’¹⁷⁶) discussed this issue. When *Rajden*

¹⁷¹ *Kantaria B.*, Principles of the Western Constitutionalism and Legal Nature of the Form of Government in the First Georgian Constitution, 2012, p. 10 (in Georgian).

¹⁷² *Gegenava D., Kantaria B., Tsanava L., Tevzadze T., Macharashvili Z., Javakhishvili P., Erkvania T., Papashvili T.*, Constitutional Law of Georgia, 2nd edition, 2016, p. 39 (in Georgian).

¹⁷³ *Widmer P.*, Switzerland as a Special Case, 2012, p. 353 (in Georgian).

¹⁷⁴ *Mikeladze K.*, Constitution of the Democratic Republic and Parliamentary Republic, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 44 (in Georgian).

¹⁷⁵ *Kantaria B.*, Principles of the Western Constitutionalism and Legal Nature of the Form of Government in the First Georgian Constitution, 2012, p. 62 (in Georgian).

¹⁷⁶ Discussion of the Constitution in the Constituent Assembly, Sitting of 15 December, Speech of *K.*

Arsenidze addressed the Constituent Assembly, he emphasized that the main feature of the a democratic republic is the collective nature (collegiality) of the executive power.¹⁷⁷ In Switzerland this approach led to, what was termed by *Paul Widmer*, referring to *Jürgen Habermas*, the transformation of the decisionist democracy into deliberative democracy.¹⁷⁸

4. THE NEGATION OF THE INSTITUTION OF THE PRESIDENCY

The discussions on the Constitution in the bodies of the First Republic of Georgia was constantly marked by the negative attitude, reaching the level of intuitive negation of any slightest materialization of the position of the head of state. When they had an opportunity, the Social Democrats were eager to criticize the institution of presidency (the criticism of monarchy was not relevant at that time). This attitude stems from *Karl Marx*. In ‘the Class Struggles in France’ *Karl Marx* opposed the institution of presidency, as he considered it contradictory to have simultaneously two sovereigns, the president and the national assembly.¹⁷⁹ Moreover, in ‘the Eighteenth Brumaire’ *Karl Marx* wrote, that the Constitution invalidates itself, when it introduces the institution of a directly elected president, which has personal ties with the nation,¹⁸⁰ as a result, ‘the president possesses a sort of divine right against the national assembly’.¹⁸¹ He viewed the ‘substitution of the constant, unaccountable, hereditary royal rule by the temporary, accountable and elected rule of a four-year presidency’ as the legalization of dictatorship.¹⁸²

The issue of presidency was fiercely discussed in the Constitutional Commission from the very beginning. On 14 June 1918, the topic of the executive power was discussed and, naturally, the first issue considered was the institution of presidency, which was mainly lobbied by the National Democratic Party through *Giorgi Gvazava*. However, this proposal was dismissed,¹⁸³ as was the next proposal on the election of the head of

Japaridze, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 624 (in Georgian).

¹⁷⁷ Discussion of the Constitution in the Constituent Assembly, Sitting of 17 December, Speech of *R. Arsenidze*, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 641 (in Georgian).

¹⁷⁸ *Widmer P.*, Switzerland as a Special Case, 2012, p. 262.

¹⁷⁹ *Marx K.*, The Class Struggle in France, 1848-1850 in: *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 177.

¹⁸⁰ *Marx K.*, The Class Struggle in France, 1848-1850 in: *Marx K., Engels F.*, Selected Works, Volume I, 1963, pp. 184-185.

¹⁸¹ *Marx K.*, The Class Struggle in France, 1848-1850 in: *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 185.

¹⁸² *Marx K.*, The Class Struggle in France, 1848-1850 in: *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 175.

¹⁸³ The Constitutional Commission, Wednesday, 14 June 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 88 (in Georgian).

government in the popular elections.¹⁸⁴ It is noteworthy that the original draft provided the office of the ‘Chairperson of the Republic of Georgia’ instead of the chairperson of the government, but the Commission dismissed it as well.¹⁸⁵ *Leo Natadze* proposed an idea, according to which the chairperson of the government should simultaneously serve as a chairperson of the parliament, but it seems, that the Commission did not disapprove of it either.¹⁸⁶ *Noe Zhordania* was also opposed to the institution of the presidency. In his December speech he emphasized, that the Constitution of Georgia would establish the office of the president.¹⁸⁷

This institution was also opposed by the Socialist Federalists; *Samson Dadiani* delivered the speech during debates on the Constitution at the sitting of the Constituent Assembly: ‘The president and the rights granted to this institution is unacceptable for our faction. In view of its powers, the president is the same as a king.’¹⁸⁸ *Rajden Arsenidze* called for a republic without a president and termed it as ‘an elected king’¹⁸⁹. He referred to the Swiss model as a solution instead.¹⁹⁰

Karl Marx was the first pillar, on whom the Social Democrats based their protest against presidency; the second one was the Swiss experience. With regard to the presidency, the framers of the Constitution wanted to adopt the approach taken by that country.¹⁹¹ *Paul Widmer* explained the Swiss model, stating that this people did not want to have a head of the state and a government, since ‘no one except for the people should be granted the right to have the final say’.¹⁹² *Aleksandre Mdivani* argued that the reason therefor was the fear of consolidating all the power in one person, as a result of which the Swiss people founded a collective body, the Federal Council.¹⁹³

¹⁸⁴ The Constitutional Commission, Wednesday, 14 June 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 88 (in Georgian).

¹⁸⁵ The Constitutional Commission, Wednesday, 14 June, 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 88 (in Georgian).

¹⁸⁶ The Constitutional Commission, Wednesday, 14 June, 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 88 (in Georgian).

¹⁸⁷ Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, 609, p. 212 (in Georgian).

¹⁸⁸ The Constituent Assembly, Sitting of 8 December, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 613 (in Georgian).

¹⁸⁹ *Arsenidze R.*, Democratic Republic, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 49 (in Georgian).

¹⁹⁰ *Arsenidze R.*, Democratic Republic, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 51 (in Georgian).

¹⁹¹ *Kantaria B.*, Principles of the Western Constitutionalism and Legal Nature of the Form of Government in the First Georgian Constitution, 2012, p. 85 (in Georgian).

¹⁹² *Widmer P.*, Switzerland as a Special Case, 2012, pp. 158-159.

¹⁹³ *Mdivani A.*, Government and Its Accountability, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 295 (in Georgian).

Eric Lee explains the dismissal of presidency with two arguments:¹⁹⁴ 1. The inertia of the clash with Tsarism (this opinion is also shared by *Giorgi Papuashvili*;¹⁹⁵ the fear of the transformation of the president into a monarch is also discussed by a group of authors¹⁹⁶); 2. The internal leadership culture of the party built in the previous years, which was related to the collective rule. *Giorgi Papuashvili* shares this second argument¹⁹⁷ as well and adds another argument – *Noe Zhordania*'s lack of charisma. He states, 'considering the negative attitude towards this institution in the party, he [*Noe Zhordania*] himself opposed the introduction of presidency, which at the end, appeared to be the decisive factor against its introduction'.¹⁹⁸ It seems that *Noe Zhordania* supported the existence of the office of the head of the state, but stepped back after facing the opposition of the representatives of his party. However, there is no document that would prove (neither does the author of this opinion cite any source) that *Noe Zhordania* actually supported the introduction of presidency. As to the first two arguments, they are of secondary importance. What matters is the fact that the non-intermediary democracy cannot be reconciled with presidency.

The Socialist Federalists also opposed to this, but they did not share the model proposed by the Social Democrats either. They believed, that the status of the chairperson of the government provided by the draft amounted to the status of president in practice, it was just named differently (Chairperson of the government). This argument was articulated by *Leo Shengelia* at the sitting of the Constituent Assembly.¹⁹⁹ Now we should check the reasons for this approach.

5. THE CHAIRPERSON OF THE GOVERNMENT AND THE CABINET

After the negation of presidency, the issue of the chairperson of the government appeared on the agenda. At first, there was an idea to choose the chairperson for only one year and

¹⁹⁴ *Lee E.*, *The Experiment, The Forgotten Revolution of Georgia 1918-1921*, 2018, p. 254.

¹⁹⁵ *Papuashvili G.*, *1921 Constitution of the Democratic Republic of Georgia: Looking Back after Ninety Years*, in: '1921 Constitution of the Democratic Republic of Georgia', 2nd edition, 2013, p. 24 (in Georgian).

¹⁹⁶ *Gegenava D., Kantaria B., Tsanava L., Tevzadze T., Macharashvili Z., Javakhishvili P., Erkvania T., Papashvili T.*, *Constitutional Law of Georgia*, 2nd edition, 2016, p. 37 (in Georgian).

¹⁹⁷ *Papuashvili G.*, *1921 Constitution of the Democratic Republic of Georgia: Looking Back after Ninety Years*, in: '1921 Constitution of the Democratic Republic of Georgia', 2nd edition, 2013, p. 24 (in Georgian).

¹⁹⁸ *Papuashvili G.*, *1921 Constitution of the Democratic Republic of Georgia: Looking Back after Ninety Years*, in: '1921 Constitution of the Democratic Republic of Georgia', 2nd edition, 2013, p. 24 (in Georgian).

¹⁹⁹ The Constituent Assembly, Wednesday, 22 December, *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume II, p. 677 (in Georgian).

only one term of office. This principle was lobbied by *Pavle Sakvarelidze*.²⁰⁰ However, as it was already mentioned above, in May 1920, the draft did not mention any term of office at all. During the following constitutional debates, at the sitting of 18 June, the Commission supported *Rajden Arsenidze's* idea regarding the annual election of the chairperson of the government (election for more than two terms was prohibited).²⁰¹ The same principle was advocated by *Viktor Tevzaia* before the Constituent Assembly. In his speech he supported the institution of the chairperson of the government, who could be elected for the maximum of two terms of office, which he justified by the supervision on the economic activities of the state.²⁰² Eventually, the Constitution incorporated the amendment proposed by *Rajden Arsenidze* and determined the one-year term of office of the chairperson of the government, including the right to be re-elected for one more term.

However, the Commission did not took the second suggestion of *Rajden Arsenidze* into account, which he presented at the sitting of 21 April 1920. According to this proposal, the phrase 'is the highest representative of the Republic', pertaining to the chairperson of the government, had to be substituted with the words 'is first among the equals'.²⁰³ This idea was most probably inspired by the Swiss system. Finally and unfortunately, the Constitution included a slightly modified version and the chairperson of the government was granted the status of the highest representative of the Republic.²⁰⁴ The above-mentioned criticism of *Leo Shengelia* was nurtured by this exact part.²⁰⁵ His argument was refuted by *Viktor Tevzaia*. At first, he opposed not only presidency, but the whole system. Later on he declared: 'We only want to ensure that the place of the government is not empty and, hence, we grant the chairperson of the government such rights, which will protect the state from this emptiness.'²⁰⁶ In his opinion, this was the reason, why the chairperson of the government was granted more 'power and importance' than the head of the Federal Council of Switzerland.²⁰⁷

²⁰⁰ *Sakvarelidze P.*, For the Constitution of Georgia, in: 'Chronicles of Georgian Constitutionalism', 2016, p. 310 (in Georgian).

²⁰¹ The Constitutional Commission, 18/VI – Wednesday, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 100 (in Georgian).

²⁰² The Constituent Assembly, Sitting of 14 December, Discussion of the Constitution, Speech of *V. Tevzaia*, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 621 (in Georgian).

²⁰³ The Constitutional Commission, Wednesday, 28 May, p. 77; Journal of the Sittings of the Constitutional Commission of the Constituent Assembly, 21 April, 1920, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, pp. 379-380 (in Georgian).

²⁰⁴ 1921 Constitution of Georgia, Article 79, Paragraph 1, Clause 1, available at: <<https://matsne.gov.ge/document/view/4801430?publication=0>> (accessed 15.7.2021).

²⁰⁵ The Constituent Assembly, Wednesday, 22 December, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 677 (in Georgian).

²⁰⁶ The Constituent Assembly, Sitting of 8 December, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, pp. 615-616 (in Georgian).

²⁰⁷ *Mdivani A.*, Government and Its Accountability, in: 'Chronicles of Georgian Constitutionalism', 2016, p. 296 (in Georgian).

There is one important factor in this debate: the target of criticism of the Socialist Federalists was the highest representative functions of the chairperson of the government, but *Leo Shengelia's* criticism was based on a false assumption. The functions of the Federal President of Switzerland include the representation of the Confederation, both within the Country and abroad.²⁰⁸ This was not the part, where the Georgian model diverged from the the Swiss system. In the draft of the Social Democrats, the prime minister was strengthened through the capacity to appoint the members of the government and exactly this is addressed by *Viktor Tevzaia* and *Aleksandre Mdivani*. In the remaining part, the powers of the chairperson and that of the other members of the government are identical (only their jurisdictions differ) – as *Rajden Arsenidze* points it out.²⁰⁹ The powers of the chairperson of the government included ‘neither the appointment of officials, nor the conclusion of the international treaties, the dissolution and summoning of the parliament or the highest management of state administration [...] The Chairperson could only lead negotiations with other states’.²¹⁰

When the Constitutional Commission started to work, there were several versions of the composition of the government. *Noe Zhordania* had an idea, that the ministers should be appointed by the parliament (and not the prime minister), as officials without political accountability.²¹¹ This was similar to the Swiss model, where the Assembly elects the members of the Federal Council.²¹² *Rajden Arsenidze* proposed to the Commission, that the entire cabinet should be presented to the parliament, however, this proposal did not receive any support²¹³ (he was advocating this idea early on²¹⁴). The Commission also considered the issue of determining the minimal number of ministers, however, this version also failed.²¹⁵ Finally, it was decided to maintain the principle, that had already been applied in the country: the representative body had to elect the chairperson of the government, that would then form the cabinet.²¹⁶ This was criticized by the Socialist

²⁰⁸ *Häfelin U., Haller W., Keller H., Thurnheer D.*, Swiss Federal State Law, Fully revised and enlarged 9th edition, 2019, p. 574.

²⁰⁹ The Executive Power, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, pp. 854-855 (in Georgian).

²¹⁰ The Executive Power, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, pp. 855-856 (in Georgian).

²¹¹ The Sitting of 22 June 1918 of the Constitutional Commission, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 31 (in Georgian).

²¹² *Haller W.*, The Swiss Constitution in a Comparative Context, 2012, p. 157.

²¹³ The Constitutional Commission, Wednesday, 14 June 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, pp. 87-88 (in Georgian).

²¹⁴ *Arsenidze R.*, Democratic Republic, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 59 (in Georgian).

²¹⁵ The Constitutional Commission, Wednesday, 14 June 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 87 (in Georgian).

²¹⁶ Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 608 (in Georgian); The Executive Power, The Constitution of the First Republic of Georgia (1921), Materials and

Revolutionary *Samson Dadiani* and he called this procedure a ‘three-storied’ rule of elections, where the ‘ministers are far from people’.²¹⁷ The Social Democrats responded to this argument with the individual responsibility of the ministers.

VI. THE PARLIAMENT

1. THE POWERS AND THE TERM OF OFFICE

‘Sovereignty belongs to the people: the Parliament exercises the people’s sovereignty within the limits established by this Constitution’²¹⁸ – these words were included in the sample draft prepared by *Rajden Arsenidze*. The final Constitution states as follows: ‘Dominion belongs to the whole nation, the Parliament exercises the dominion of the nation within the limits set by this Constitution.’²¹⁹ The practically undefined powers of the Parliament demonstrates that the architects of the supreme law were guided by the principle, according to which the non-intermediary democracy requires not only the direct involvement of the people in the decision-making process, but also broad powers of the Parliament.²²⁰ *Rajden Arsenidze* fought to ensure that the powers of the Council were not enumerated in the Constitution, as all the powers belonged to it, other than those delegated by it to the government.²²¹ Finally, he did not succeed and the text of the onstitution includes the list of powers of the Parliament, but the respective legal norm is so broad, that it practically grants the legislature an all-embracing mandate.²²² The principle of parliamentary supremacy entails the negation of the executive veto as well.²²³

The short, three-year term of office of the legislature was written in the supreme law in order to bring the Parliament closer to the attitudes of the voters. However, it was thought originally, that the representatives had to occupy their positions for a shorter time. In his commentary on the sample draft, *Rajden Arsenidze* wrote, ‘in this manner,

Documents, Volume II, pp. 849-850 (in Georgian).

²¹⁷ *Dadiani S.*, Our Constitution – Viewed in the Light of the Right to People’s State, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 269 (in Georgian).

²¹⁸ The Executive Power, Sample Draft of *R. Arsenidze*, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 803 (in Georgian).

²¹⁹ 1921 Constitution of Georgia, Article 52, available at: <<https://matsne.gov.ge/document/view/4801430?publication=0>> (accessed 15.7.2021).

²²⁰ *Haller W.*, The Swiss Constitution in a Comparative Context, 2012, p. 155.

²²¹ The Constitutional Commission, Sitting of 3 August 1918, The Constitution of the First Republic of Georgia (1921), Materials and Documents, p. 56 (in Georgian).

²²² 1921 Constitution of Georgia, Article 54, available at: <<https://matsne.gov.ge/document/view/4801430?publication=0>> (accessed 15.7.2021).

²²³ Discussion of the Constitution in the Constituent Assembly, Sitting of 15 December, Speech of *K. Japaridze*, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 624 (in Georgian).

the representative body will reflect the nation more accurately. Thus, its work will approximate the actual outcomes of direct democracy.²²⁴ However, he also admits that the representative democracy still suffered from the problems related to representation. He thought, that the tool to eradicate this problem is the popular control, which is reflected in the term of office of the legislature. In view of *Rajden Arsenidze*, the term had to be two years.²²⁵ Initially, the text drafted by *Rajden Arsenidze* stated so.²²⁶ *Spiridon Kedia* and *Sergi Japaridze* preferred a three-year term, while *Giorgi Naneishvili* supported the idea to reduce the term even further.²²⁷ The following sample draft included a two-year term.²²⁸ The Commission considered the issue once again on 4 July 1919 and there it decided to elect the legislature for that term.²²⁹

After several months, at the sitting of 14 April 1920, *Sergi Japaridze* raised this issue before Commission again. He thought that that term was short and the Parliament would not be able to implement the policy that it promised, and frequent elections would overwhelm the people; the expenses had to be considered as well.²³⁰ However, this issue was not considered anew due to the absence of a quorum. Finally, the decision to increase the term of the parliament to three years was made at the next sitting of the Commission.²³¹ From the perspective of direct democracy, this was a step back.

2. BICAMERALISM AND DISSOLUTION OF THE PARLIAMENT

The next debated issue was related to the structure of the Parliament. A unicameral parliament, elected by the people in the democratic procedure, was the ideal of the Social Democrats.²³² For *Rajden Arsenidze* a unicameral legislature was acceptable.

²²⁴ The Parliament, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 808 (in Georgian). Presumably this document presents an explanatory note to the sample draft and it was authored by *R. Arsenidze*.

²²⁵ *Arsenidze R.*, Democratic Republic, in: 'Chronicles of Georgian Constitutionalism', 2016, p. 53 (in Georgian).

²²⁶ Journal of the Sitzings of the Constitutional Commission, 28 February 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, p. 209 (in Georgian).

²²⁷ Journal of the Sitzings of the Constitutional Commission, 28 February 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, pp. 210-211 (in Georgian).

²²⁸ The Parliament, Sample Draft of *R. Arsenidze*, The Constitution of the First Republic of Georgia (1921), Materials and Documents, p. 226 (in Georgian).

²²⁹ The Constitutional Commission, Wednesday, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, pp. 79-80 (in Georgian).

²³⁰ Journal of the Sitting of the Constitutional Commission of the Constituent Assembly, 17 April 1920, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, pp. 369-370 (in Georgian).

²³¹ Journal of the Sitting of the Constitutional Commission of the Constituent Assembly, 17 April 1920, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 370 (in Georgian).

²³² Meeting of the Constitutional Commission, 11 June 1918, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 29 (in Georgian).

He considered the upper chamber to be undemocratic body, that represents the interests of the bourgeoisie, mostly due to the two-tiered system of its elections.²³³ *Pavle Sakvarelidze* also advocated this position and brought the example of the Swiss cantons, where the legislatures are usually unicameral.²³⁴ *Sergi Japaridze* even called the upper chamber a reactionary event,²³⁵ while *Rajden Arsenidze* viewed it as a possibility of the politicization of the local self-government units, and therefore opposed it.²³⁶ The National Democrat *Spiridon Kedia* supported the idea of a bicameral system.²³⁷

Another issue was the dissolution of the parliament. The framers of the Constitution ruled out the inclusion of this mechanism in the Constitution throughout the whole process and at the end it remained that way. There was no mechanism for the dissolution of the parliament. The reason therefor was that the allowance of its dissolution would imply that ‘there was a body with a higher authority, which would limit the sovereignty of the Parliament’.²³⁸ *Rajden Arsenidze* wrote that the only mechanism to let the Parliament go home, is for the people to make such decision through a referendum.²³⁹ The people, who are as the source of the power, could change the Parliament, both through regular and extraordinary elections.²⁴⁰ This part could lead to certain ambiguities. Neither the any of the drafts, nor the Constitution itself states anything in this regard, however, it seems, that *Rajden Arsenidze* allowed the possibility of a such referendum after constitutional interpretations and considered it to be an important mechanism.²⁴¹ In this respect, the Georgian Social Democrats were inspired by the example of several cantons.²⁴² This tool is still maintained in Switzerland today, even though ‘it rarely has any practical significance’.²⁴³

²³³ Journal of the Sitting, 2/IV-19, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, p. 47 (in Georgian).

²³⁴ *Sakvarelidze P.*, Letters on the Political Order of Different Countries, p. 127 (in Georgian).

²³⁵ Journal of the Sitting of the Constitutional Commission of the Constituent Assembly, 28 February 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, p. 212 (in Georgian).

²³⁶ Journal of the Sitting of the Constitutional Commission, 28 February 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, pp. 210-213 (in Georgian).

²³⁷ Journal of the Sitting of the Constitutional Commission, 28 February 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, p. 214 (in Georgian).

²³⁸ The Parliament, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 823 (in Georgian).

²³⁹ The Parliament, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 824 (in Georgian).

²⁴⁰ The Parliament, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 824 (in Georgian).

²⁴¹ The Parliament, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 824 (in Georgian).

²⁴² *Sakvarelidze P.*, For the Constitution of Georgia, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 310 (in Georgian).

²⁴³ *Haller W.*, The Swiss Constitution in a Comparative Context, 2012, p. 127.

3. THE ELECTORAL SYSTEM

Karl Marx viewed the elections as a mechanism of representation of diverse interests of the society in the legislature, the task that was best accomplished through the proportional election system. He thought that the elections can ‘reveal real people i.e. representatives of different classes’.²⁴⁴ He supported the idea of universal suffrage, as ‘one of the first and most important tasks of the militant proletariat’,²⁴⁵ as a ‘tool of liberation’.²⁴⁶ Moreover, *Karl Marx* considered that this mechanism changed not only the core of the understanding of the state, but also the fight strategy of the proletariat. If earlier, the bourgeoisie used the state agencies for the organization of its domination, now the working class would employ them for the fight against the same agencies.²⁴⁷ For *Karl Marx*, the Paris Commune was an example of the social organization, which solved the tasks, posed by the socialist ideas to the state unity. He considered that ‘the Paris Commune created ‘a political form, which enabled the economic liberation of labor’.²⁴⁸ Moreover, *Friedrich Engels*²⁴⁹ considered the general elections (along with the imperative mandates) as one of the two trustworthy measures to transform the state and state institutions from masters of the society into its servants.²⁵⁰ In turn, *Karl Marx* considered the general elections as particularly important among the reforms implemented by the Commune.²⁵¹ Earlier, the Socialists reproached Switzerland precisely for the form of elections, the absence of a proportional elections,²⁵² until the consensus was reached in 1918 and as a result of a popular initiative the Swiss Constitution was amended, ‘which gave rise to a rigorous movement of workers to reach more adequate representation in the bodies of federal government’.²⁵³

Naturally, the Georgian *Marxists*, who were granted the role of the determination of the institutional framework of the state by historical fate, also shared this position. The newspaper ‘Kvali’ [the Path] had been writing as early as the end of XIX century and

²⁴⁴ *Marx K.*, The Class Struggle in France, 1848-1850 in: *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 160.

²⁴⁵ *Marx K.*, The Class Struggle in France, 1848-1850 in: *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 124.

²⁴⁶ *Marx K.*, The Class Struggle in France, 1848-1850 in: *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 125.

²⁴⁷ *Marx K.*, The Class Struggle in France, 1848-1850 in: *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 126.

²⁴⁸ *Marx K.*, The Civil War in France, in: *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 603.

²⁴⁹ The importance of universal suffrage F. Engels underscored in view of the background of Post-Bismarck Germany, where the parliamentary route became the determining form for the organization of social democracy.

²⁵⁰ *Engels F.*, Introduction, Civil War in France, in: *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 558.

²⁵¹ *Marx K.*, The Civil War in France, in: *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 599.

²⁵² *Widmer P.*, Switzerland as a Special Case, 2012, p. 111.

²⁵³ *Haller W.*, The Swiss Constitution in a Comparative Context, 2012, p. 146.

the beginning of the XX century about the Swiss model of proportional representation as the tool of fairness for the exploited.²⁵⁴ *Rajden Arsenidze* identified economic and political power and aspired to deprive the bourgeoisie of the latter power through the constitutional reforms.²⁵⁵ Firstly, he considered the introduction of universal suffrage as necessary for this purpose.²⁵⁶ *Rajden Arsenidze* thought that direct decision-making by the people was the ideal, but he realized, that when there are ‘many people’ (meaning many individuals), it is impossible. That is why he wrote: ‘the only means of law-making [...] in our country is law-making through the representatives (deputies).’²⁵⁷ However, he also admits that ‘elected people, no matter which election procedure is employed, will never express the people’s will perfectly’.²⁵⁸ In his opinion this flaw was addressed by political parties, as the parties had their programs and the members of the parties acted under those programs, because they were accountable to their parties, while the non-partisan candidates were not accountable to anyone.²⁵⁹

The issue of the Parliament was considered by the Commission on 4 July 1919 and it was decided then, that the legislative body would be elected through a proportional system.²⁶⁰ The proportional system was also supported by the Socialist Revolutionaries. *Samson Dadiani* wrote, ‘Indeed, the whole nation will be represented in the Parliament, that is why proportional system is introduced for elections. The proportional system allows even the smallest groups to have their representatives in the Parliament’.²⁶¹ Thus, this primary feature of the direct democracy was approved without much strife. It eradicates the flaw emanated by the area and the number of population of modern states. These two factors do not allow the gathering of citizens, and the debates on general problems, therefore, it is necessary to have public attitudes accurately reflected in the representative body, so that the debates in the legislative body are approximated as much as possible to the debates that would have taken place in Agora. Regarding the Swiss perspective, the Swiss people acquired the right to constitutional referendum in

²⁵⁴ *Jones S.*, *Socialism in Georgian Colors: The European Road to Social Democracy 1883-1917*, 2nd edition, 2018, p. 88.

²⁵⁵ *Arsenidze R.*, *Democratic Republic*, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 45 (in Georgian).

²⁵⁶ *Arsenidze R.*, *Democratic Republic*, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 45 (in Georgian).

²⁵⁷ *Arsenidze R.*, *Democratic Republic*, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 52 (in Georgian).

²⁵⁸ *Arsenidze R.*, *Democratic Republic*, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 52 (in Georgian).

²⁵⁹ *Arsenidze R.*, *Democratic Republic*, in: ‘Chronicles of Georgian Constitutionalism’, 2016, pp. 52-53 (in Georgian).

²⁶⁰ The Constitutional Commission, Wednesday, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, pp. 79-80 (in Georgian).

²⁶¹ *Dadiani S.*, *Our Constitution – Viewed in the Light of the Right to People’s State*, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 264 (in Georgian).

1874, right of initiative in 1891 and finally the third momentum occurred in 1918, when the National Council was elected through the proportional system.²⁶² Georgia also held proportional elections in 1919.

The second issue involves the constituencies. The framers of the Constitution considered the possibilities to form single or many electoral districts as part of the proportional system. Theoretically, they were aware, that the single electoral district is better aligned with the idea of direct democracy, but they encountered the practical impediment related to the geographic location of the country, its mountainous places, and the presence of people of various nations and religions.²⁶³ *Rajden Arsenidze* wrote in the commentary on the draft, that the system of elections should allow the opportunity of representing the interests of provinces, ‘which can be achieved only through the division of the Republic into a number of electoral districts’.²⁶⁴ The sample draft that he prepared was based on the same principle.²⁶⁵ However, the issue of districts was ultimately left open in the Constitution.²⁶⁶ Prior to that, the elections of the Constituent Assembly were held in a unified electoral district.

VII. THE CENTER AND THE LOCAL SELF-GOVERNMENT

1. THE EXECUTIVE BRANCH IN THE DEMOCRATIC REPUBLIC

The Democrats do not have right to sleep peacefully until solving the issue of the executive power. The solution of the issue of accountability still does not mean, that the cabinet is democratic. It is necessary to ascertain, whether it is the only the expression of the executive power.²⁶⁷ The main feature distinguishing the parliamentary republic from the direct democracy is the issue of possessing the executive power. In view of *Noe Zhordania*, one of the characteristics of the parliamentary system is the ministry holding the executive power exclusively.²⁶⁸ In this case, the government is so strong,

²⁶² *Widmer P.*, *Switzerland as a Special Case*, 2012, p. 285.

²⁶³ *The Parliament, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II*, pp. 808-809 (in Georgian).

²⁶⁴ *The Parliament, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II*, pp. 808-809 (in Georgian).

²⁶⁵ *The Parliament, Sample Draft of R. Arsenidze, The Constitution of the First Republic of Georgia (1921), Materials and Documents*, p. 802 (in Georgian).

²⁶⁶ *1921 Constitution of Georgia*, 46, available at: <https://matsne.gov.ge/document/view/48_01430?publication=0> (accessed 15.7.2021).

²⁶⁷ *Zhordania N.*, *Social Democracy and Organization of the Georgian State*, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), *The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I*, 2015, p. 83 (in Georgian).

²⁶⁸ *Zhordania N.*, *Social Democracy and Organization of the Georgian State*, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), *The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I*, 2015, p. 83 (in Georgian).

that it destroys all the democratic achievements.²⁶⁹ In the opposite scenario, in a democratic state (direct democracy) this responsibility is allocated among the central and the local governments (this opinion is also shared by *Rajden Arsenidze*).²⁷⁰ He brings the example of Switzerland, where the executive officials at the level of cantons are appointed either by the cantons or directly; there is also the 1793 model of France, where the administrators are elected by the people through their delegates.²⁷¹ *Noe Zhordania* believed, that Georgia had to choose the ‘convent system’, which means that self-governments are granted the power to appoint executive administrators and these officials are subordinated to the self-governments, while indirectly they are also subordinated to the respective minister (legality review).²⁷² During the discussion of the Constitution, *Rajden Arsenidze* emphasized the two-tiered nature of executive branch in his speech and declared that the executive power is based on the community.²⁷³

There is a bizarre provision on this issue in the Constitution, which states that in the matters of the government and the administration, self-governments are subordinated to the central bodies.²⁷⁴ At first glance, it is strange, that a political union, that was as eager on the issues of self-government as the Social Democrats, included such a text in the Constitution. But in reality, they implied the competences of the central government under the term ‘government and administration’. It is noted in the commentary on the draft, that self-government ‘is only representative of the state in the matters of government and administration. There is no body, other than self-government that will execute the policy of the central government in the matters of government and administration.’²⁷⁵ The acts of the government in these matters are compulsory for the local government.²⁷⁶

²⁶⁹ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, pp. 85-86 (in Georgian).

²⁷⁰ Discussion of the Constitution in the Constituent Assembly, Sitting of 17 December, Speech of *R. Arsenidze*, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 642 (in Georgian).

²⁷¹ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 84 (in Georgian).

²⁷² *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 86 (in Georgian).

²⁷³ Discussion of the Constitution in the Constituent Assembly, Sitting of 17 December, Speech of *R. Arsenidze*, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 645 (in Georgian).

²⁷⁴ 1921 Constitution of Georgia, 46, available at: <<https://matsne.gov.ge/document/view/4801430?publication=0>> (accessed 15.7.2021).

²⁷⁵ The Local Self-Government, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 842 (in Georgian). Presumably, this document presents an explanatory note to the sample draft and it was authored by *M. Rusia*.

²⁷⁶ The Local Self-Government, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 843 (in Georgian).

The commentary notes, that the unity of the central and local governments can be seen here, that should characterize government and administration.²⁷⁷ Thus, the local bodies administer the enforcement of their own, as well as governmental decisions. Hence, it was included in the final text of the Constitution, that the local self-government is also local government body.²⁷⁸

Finally, *Noe Zhordania* framed the system in his speech, which was reflected in the Constitution and according to which the government governs ‘less the people [self-government takes its place] and more the things’.²⁷⁹ According to this vision, the management of the economy is the business of the Cabinet.²⁸⁰

2. LOCAL SELF-GOVERNMENT

The early theoreticians of democracy considered the small number of citizens as a necessary condition for democracy. *Aristotle* and *Jean-Jacques Rousseau* wrote, that it is necessary, that the citizens know each other, which fosters the decision-making based on reasoning and checks on each other.²⁸¹ The modern states need strong self-governments to address the flaw generated by the excess of population.

Karl Marx also favored self-governments. In the ‘Eighteenth Brumaire’ he distinguished between (1) common and (2) general interest. In his opinion, the former encourages the creativity of the members of the community, while the latter makes it meaningless and transforms the matters, that are usually the business of the community, into the object of governmental activities. It also leads to the centralization of the state, which should be demolished, according to him.²⁸² In another work, he welcomes the formation of the self-government of the producers instead of the central government.²⁸³ According to *Karl Marx*, the communal system did not destroy the unity of the nation, but organized it instead.²⁸⁴ ‘This form of organization would return all the power to the organism

²⁷⁷ The Local Self-Government, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, pp. 842-843 (in Georgian).

²⁷⁸ 1921 Constitution of Georgia, Article 98, available at: <<https://matsne.gov.ge/document/view/4801430?publication=0>> (accessed 15.7.2021).

²⁷⁹ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 86 (in Georgian).

²⁸⁰ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 86 (in Georgian).

²⁸¹ *Widmer P.*, Switzerland as a Special Case, 2012, p. 133.

²⁸² *Marx K.*, The Eighteenth Brumaire of Louis Bonaparte, in *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 369.

²⁸³ *Marx K.*, The Civil War in France, in *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 600.

²⁸⁴ *Marx K.*, The Civil War in France, in *Marx K., Engels F.*, Selected Works, Volume I, 1963, pp. 600-601.

of the society, which until now has been devoured by this parasitic outgrowth - the state, which is fed at the expense of the society and obstructs its free movement.²⁸⁵ *Karl Marx* based his argument firstly on the experience of France in 1848-1852 (the formation of a centralized apparatus of the modern state), while after 20 years he refers to the experience of the Paris Commune in his 'Civil War'. At the end, what was the common interest in France in 1848 and left more or less autonomy to the individual communities for management of their common interests, transformed into national-general interest along with centralization, that is governed from Paris and endangers democracy. The Paris Commune destroyed this centralization, but did not revert back to the pre-centralization setting; it creates something essentially new instead, which was perceived by *Karl Marx* as an unseen historical lesson and a new opportunity provided by the Commune.

Self-government was one of the main topics for the Georgian Social Democrats. They counted on the communal government called 'eroba', as the organization closest to the people. At the Second Congress, they supported the pluralist and decentralized model of Socialism.²⁸⁶ In addition to the technical ease of the implementation of democratic processes in the small societies and the ideological grounds taken from *Karl Marx*, they were also able refer to their own experience as an important argument. It all started from the 'Republic of Guria', when at the outset of the XX century, the Gurian peasants declared disobedience to the Empire and started to build the society based on equality and freedom. The researcher of this issue, *Irakli Makharadze* wrote on the rich experience of self-government in the context of the Gurian revolutionary movement of 1902-1906.²⁸⁷ At that time, there were multiple examples of self-government in other parts of Georgia as well, for example in Upper Imereti.²⁸⁸ Later on, *Karl Kautsky* wrote about the period following the demolition of Tsarism: 'Revolution brought full self-government to the *erobas* and *uezds* [administrative subdivisions] of Georgia. [...] This is also true for the cooperative societies.'²⁸⁹ At the time of the drafting of the Constitution, Georgia already had the experience, which *Wilhelm Haller* labelled as 'democracy lived through', that had to substitute the 'rigid legislative machine'.²⁹⁰

For the authors of the Constitution, the issue of local self-government was one of the main watersheds for the purpose of distinguishing between the models of parliamentary

²⁸⁵ *Marx K.*, The Civil War in France, in *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 602.

²⁸⁶ *Jones S.*, Socialism in Georgian Colors: The European Road to Social Democracy 1883-1917, 2nd edition, 2018, p. 145.

²⁸⁷ For details, see *Makharadze I.*, Republic of Guria, Gurian Peasant Movement 1902-1906, 2016, pp. 37, 61-62, 74-76, 98, 100, 105-106, 110-119, 202 (in Georgian).

²⁸⁸ *Abdushelishvili S.*, In Memory of the Three Friends (*Guruli Z., Pkhaladze G. and Gaprindashvili G.*) in: *Guruli Z.*, In Memoriam, 2005, p. 97 (in Georgian).

²⁸⁹ *Kautsky K.*, Georgia. Social-Democratic Republic of Peasants. Impressions and Observations, 2018, p. 94.

²⁹⁰ *Haller W.*, The Swiss Constitution in a Comparative Context, 2012, p. 154.

and democratic republics. For example, in view of *Noe Zhordania*, in the parliamentary republic the bourgeoisie executed the whole power at the central level and could not tolerate the local freedom.²⁹¹ In non-intermediary democracy, the goal of distancing certain mechanisms from the control of parliamentary majority is served by the formation of self-governments. ‘Here, the power is not consolidated in the center only, but is allocated between the center and the peripheries.’²⁹² As it was already mentioned above, according to this model, the center issues the laws, while the people, or the local governments controlled by the people enforce them. This meant a cabinet left without civil servants and a parliament limited by the people.²⁹³

This vision was directly transpired into the commentary of the sample draft, which presumably belongs to *Meliton Rusia*. He wrote that the draft negates the approach, where the state interests and the local needs are separated and where self-governments and central authorities are isolated from each other.²⁹⁴ In his opinion, the draft did not distinguish between state affairs and self-government affairs. Moreover, in addition to managing the issues of local economy and administration, self-government ‘is the only local body of the central government’.²⁹⁵ *Rajden Arsenidze* paid particular attention to the issues of self-government and he elaborated thereon it in his address to the Constituent Assembly, where he emphasized the relationship between the self-government and the central government as one of the special features of the draft.²⁹⁶ He named the system entrenched by the Constitution as a ‘communal form of government’, as ‘the main foundation, which emanates all the creation and power of the executive work of the Republic - this is the local self-government, the local commune’.²⁹⁷

²⁹¹ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, pp. 74-75 (in Georgian).

²⁹² *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 75 (in Georgian).

²⁹³ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 76 (in Georgian).

²⁹⁴ The Local Self-Government, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 840 (in Georgian).

²⁹⁵ The Local Self-Government, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 840 (in Georgian).

²⁹⁶ Discussion of the Constitution in the Constituent Assembly, Sitting of 17 December, Speech of *R. Arsenidze*, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 641 (in Georgian).

²⁹⁷ Discussion of the Constitution in the Constituent Assembly, Sitting of 17 December, Speech of *R. Arsenidze*, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 645 (in Georgian).

The principle of the democratic republic was also expressed in the regulation, according to which self-governments were elected by the people.²⁹⁸ The supreme law favored the proportional system here again.²⁹⁹

The authors of the Constitution wanted to form a system similar to Switzerland, where the state edifice is based on the ‘bottom-up’ and not ‘top-down’ approach.³⁰⁰ They understood, what *Paul Widmer* wrote later, that the direct democracy is strongest at the community level.³⁰¹ It was a deeply leftist idea, since the socialists ‘always treated the idea of the concentration of powers with distrust’.³⁰²

VIII. THE JUDICIARY SYSTEM

After discussing the most complex and debatable topics above (the relationships between executive and legislative powers, as well as the link between central and local governments), we can now move on to the relatively less disputable and clearer issues. Naturally, omitting the topic of the judiciary would make the present analysis incomplete. It is true, that the authors of the Constitution did not encounter as many difficulties here as in resolution of above-mentioned problems, but this does not allow for the omission of this topic; on the contrary, it demonstrates that the authors of the Constitution unanimously followed the basic postulates here, in spite of the fact, that the *Marxist* critique of the liberal judiciary is as old as *Marxism* itself. *Karl Marx* perceives the corporation of judges as the ‘fierce and fanatic defender of the old state’ and opposes the principle of irremovability of the judges.³⁰³ *Karl Marx* wrote, that after the overthrow of the king, it ‘was restored several times in form of of these irremovable inquisitors of legality’.³⁰⁴ Since the authors of the Georgian Constitution were building non-intermediary democracy, they believed in view of this goal, that ‘wherever dominion belongs to the people and the people are the rulers and lords of their public life, they should enjoy the right to judge the acts of their members as well’.³⁰⁵

²⁹⁸ The Local Self-Government, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 841 (in Georgian).

²⁹⁹ 1921 Constitution of Georgia, Article 101, available at: <<https://matsne.gov.ge/document/view/4801430?publication=0>> (accessed 15.7.2021).

³⁰⁰ *Widmer P.*, Switzerland as a Special Case, 2012, pp. 151-152.

³⁰¹ *Widmer P.*, Switzerland as a Special Case, 2012, p. 161.

³⁰² *Widmer P.*, Switzerland as a Special Case, 2012, p. 74.

³⁰³ *Marx K.*, The Class Struggle in France, 1848-1850 in: *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 177.

³⁰⁴ *Marx K.*, The Class Struggle in France, 1848-1850 in: *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 177.

³⁰⁵ The Judiciary, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 915. Presumably, this is an explanatory note to the draft (in Georgian).

The Georgia Social Democrats faced the following task: how to solve the issue of the judiciary in a way that would provide the country with a institution responsible for the dispensation of justice, that would not turn into into the bulwark of the bourgeoisie. In case of the executive and legislative powers. they took the well-travelled road to solve this problem. Similarly, to that, sharing of power was necessary here as well: part of the judges had to be elected by the people through their bodies, part of them would be appointed by the Parliament and as a result the judicial power would be allocated between the center and the people.³⁰⁶ *Konstantine Mikeladze* stated that the principle of the election of jthe udges in a non-intermediary democracy was an established rule.³⁰⁷ This approach was partially based on *Karl Marx*. While discussing the Paris Commune, he supported the direct election of judges (with the possibility of voting them out of office, as a mechanism of accountability for the citizens).³⁰⁸

The main weapons of the people were the election of judges for a fixed term and the jury trials.³⁰⁹ *Karl Marx* favored the jury trials.³¹⁰ *Eric Lee* points out, that the latter was an indirect allusion to the Republic of Guria and the idea stemmed from that experience.³¹¹ The practice of the peasant courts was indeed well-spread in Guria during 1903 -1905.³¹² The author of the commentary on the draft prepared by the Constitutional Commission noted with regret, that public trials (‘veche’³¹³) were technically impossible to execute at that time. However, he offered the public the institution of the jury trials in order to solve this problem, as the jurors were representatives of the society.³¹⁴ At the same time, *Rajden Arsenidze* always openly demonstrated his support for the jury trials.³¹⁵

The sitting of 25 October 1919 was devoted to the debates on the judiciary. The speaker was *Ioseb Baratashvili*. According to his draft, all the criminal cases had to be tried

³⁰⁶ Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, pp. 603-605 (in Georgian).

³⁰⁷ *Mikeladze K.*, Constitution of the Democratic Republic and Parliamentary Republic, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 100 (in Georgian).

³⁰⁸ *Marx K.*, The Class Struggle in France, 1848-1850 in: *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 600.

³⁰⁹ Georgia, Its Territory and Population – History – Literature and Art – Political Situation, Georgian Association of the League of Nations, 1st edition (Paris), 1937, p. 88 (in Georgian).

³¹⁰ *Marx K.*, The Eighteenth Brumaire of Louis Bonaparte, in *Marx K., Engels F.*, Selected Works, Volume I, 1963, p. 365.

³¹¹ *Lee E.*, The Experiment, The Forgotten Revolution of Georgia 1918-1921, 2018, p. 252.

³¹² *Jones S.*, Socialism in Georgian Colors: The European Road to Social Democracy 1883-1917, 2nd edition, 2018, p. 172.

³¹³ ‘Veche’ was a Slavic version of popular – community assembly, which also had judicial functions.

³¹⁴ Judiciary, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 916 (in Georgian).

³¹⁵ *Arsenidze R.*, Democratic Republic, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 65 (in Georgian).

by the jurors and the chamber of criminal law had to be a (the institution of mediator judges was taken into consideration).³¹⁶ Prior to that, *Giorgi Naneishvili* thought that all the cases had to be tried by the jurors, however, they finally adopted the provision, according to which the jury trials were introduced for grave criminal cases, as well as for political and print-related crimes.³¹⁷ The Constitution contains exactly this version of the text.³¹⁸

According to the approach of authors of the First Republic, the central government appointed the judges of the Supreme Court. However, it was decided at the end of the process to include this issue in the Constitution. Prior to that, at the sitting of 3 April 1920, it was decided, that the Senate would not be mentioned in the supreme law.³¹⁹ However, through the efforts of *Pavle Sakvarelidze* and *Akaki Chkhenkeli*, the provision about Senate was still included in the Constitution at the end.³²⁰

The work of the Constitutional Commission was marked by the efforts of the National Democratic Party to persuade the Social Democrats of the usefulness of the idea of judicial review,³²¹ but the members of the ruling party dismissed this opinion every time. *Rajden Arsenidze* defined the conceptual framework in his address to the Constituent Assembly, when he stated: ‘The judiciary is not about control, it is only an enforcement body.’³²² It was clear, that in a direct democracy the judiciary would not have the role of balancing the elected parliament. The Social Democrats were here guided by the principles and the experience of non-intermediary democracy again. The Swiss judiciary did not have the authority of constitutional review either. *Paul Widmer* explains this, referring to the belief of the Swiss people, that ‘no one other than the people, should be authorized to have the final say’.³²³ This opinion was shared by the architects of the Georgian Constitution unconditionally. This conclusion is shared by

³¹⁶ The Constitutional Commission, 25 October, 1919, *The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II*, p. 139 (in Georgian).

³¹⁷ Journal of the Sitting of the Constitutional Commission, 8 January 1919, *The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I*, p. 163 (in Georgian).

³¹⁸ 1921 Constitution of Georgia, Article 81, available at: <<https://matsne.gov.ge/document/view/4801430?publication=0>> (accessed 15.7.2021).

³¹⁹ Journal of the Sitting of the Constitutional Commission of the Constituent Assembly, 3 April 1920, *The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II*, pp. 364-367 (in Georgian).

³²⁰ Journal of the Sitting of the Constitutional Commission of the Constituent Assembly, 20 May 1920, *The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II*, pp. 413-414 (in Georgian).

³²¹ Discussion of the Constitution in the Constituent Assembly, Sitting of 15 December, Speech of *K. Japaridze*, *The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II*, p. 625 (in Georgian).

³²² Discussion of the Constitution in the Constituent Assembly, Sitting of 17 December, Speech of *R. Arsenidze*, *The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II*, p. 640 (in Georgian).

³²³ *Widmer P.*, *Switzerland as a Special Case*, 2012, pp. 158-159.

part of the researchers of the constitutional system of the First Republic. It is assumed by them, that the authors of the Georgian Draft Constitution dismissed the institution of constitutional review.³²⁴

Against this backdrop, the following opinion seems groundless: ‘whereas there was an abundance of necessary principles and ideas for the constitutional review in the Constitution, it can be assumed, that the formation of such a constitutional body in the future or authorizing the common courts to carry out constitutional review would have been logical, if the existence of independent Georgia has lasted.’³²⁵ Neither the discussions held on this topic, nor the balance of the political powers at that time allows to make such an inference. The situation could have certainly changed in the future, so that the Constitution could be amended and the Constitutional Court could be established. Even the constitutional order might have changed, but these are only speculations, which are not based on any solid ground or logical sequence of events, which would make such a development look inevitable.

IX. REFERENDUM AND PEOPLE’S INITIATIVE

1. GENERAL GROUNDS

The central idea of non-intermediary democracy is the direct implementation of the popular sovereignty. Everything stems from the people and is determined by the people, who are the source of power. However, to be translated into political action, this principle needs institutional tools. It needs such tools, which would allow the direct participation of the people in the execution of power.³²⁶ This situation is complicated by the fact, that the territorial and numerical barriers do not allow a modern state to gather its citizens and adopt decisions in this way, due to which new methods needed to be found. People’s initiative and referendum constitute such means.³²⁷ *Paul Widmer* pointed out these two main mechanisms of citizen participation in state affairs in Switzerland.³²⁸

³²⁴ *Gegenava D., Kantaria B., Tsanova L., Tevzadze T., Macharashvili Z., Javakhishvili P., Erkvania T., Papashvili T.*, Constitutional Law of Georgia, 2nd edition, 2016, p. 36; *Kinner R., Mirarch D.*, Common Democratic Objectives - The 1921 Constitution of Georgia and the 1874 Federal Constitution of the Swiss Confederation, in: *Ugrekheldidze M., Kantaria B.* (eds.), Constitutionalism Achievements and Challenges, 2019, p. 404 (in Georgian).

³²⁵ *Papuashvili G.*, 1921 Constitution of the Democratic Republic of Georgia: Looking Back after Ninety Years, in: ‘1921 Constitution of the Democratic Republic of Georgia’, 2nd edition, 2013, p. 31 (in Georgian).

³²⁶ The Parliament, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 825 (in Georgian).

³²⁷ Discussion of the Constitution in the Constituent Assembly, Sitting of 19 December, Speech of *A. Chkhenkeli*, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 667 (in Georgian); Journal of the Sitting of the Constitutional Commission, 24 February 1919, Speech of *R. Arsenidze*, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, pp. 192-193 (in Georgian).

³²⁸ *Widmer P.*, Switzerland as a Special Case, 2012, p. 153.

However, the idea of a referendum at that point was not as self-evident, as it seems today. The modern liberal constitutionalism adopted it from the concept of a democratic state. This clearly demonstrates the drastic decisions made by Georgians in 1921 once again. Even in Switzerland the population of villages, craftsmen and workers achieved the referendum after the long struggle, first at the cantonal and later at the federal level.³²⁹ In 1874, they were granted the right of a referendum and in 1891 – the right of popular initiative.³³⁰ According to *Paul Widmer*, ‘this is the most original novelty, which Switzerland created in politics’.³³¹ It was soon adopted by several states in USA³³² (first of which was South Dakota in 1898³³³).

The Georgian Social Democrats persistently underscored those mechanisms, which they considered to be the main tools of struggle against the bourgeoisie and a bourgeois state. It is interesting that *Noe Zhordania* was careful with the idea of a referendum at the beginning. He feared that opportunists would use it for their own interests and people would not be able to enjoy this good,³³⁴ but soon afterwards he changed his position and supported the idea in his speech of 4 August 1918.³³⁵ The decision of the head of the government was simplified by the French experience, that constituted a compromise allowed by the 1793 French Constitution and that determined the matters for referendum (either mandatory³³⁶, or optional³³⁷), on one hand and the matters falling within the competence of the legislature, on the other.³³⁸ *Rajden Arsenidze* also shared the idea of the mandatory referendum on certain issues³³⁹ (who also supported the idea of the popular initiative³⁴⁰). Later, on 1 December 1920, *Noe Zhordania* only referred to the optional referendum before the Constituent Assembly. He agreed, that the people

³²⁹ *Widmer P.*, *Switzerland as a Special Case*, 2012, p. 166.

³³⁰ *Widmer P.*, *Switzerland as a Special Case*, 2012, p. 166; *Haller W.*, *The Swiss Constitution in a Comparative Context*, 2012, pp. 12-13.

³³¹ *Widmer P.*, *Switzerland as a Special Case*, 2012, p. 166.

³³² *Widmer P.*, *Switzerland as a Special Case*, 2012, p. 160.

³³³ *Haller W.*, *The Swiss Constitution in a Comparative Context*, 2012, p. 2.

³³⁴ Meeting of the Constitutional Commission, 11 June 1918, *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume I, 2015, p. 27 (in Georgian).

³³⁵ *Zhordania N.*, *Social Democracy and Organization of the Georgian State*, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume I, 2015, pp. 81-82 (in Georgian).

³³⁶ Mandatory referendum refers to the case, when it is mandatory to submit the law adopted by the Parliament to the people for their approval.

³³⁷ Optional referendum refers to the case, when the law is submitted to the people for their approval, after it is required by a certain number of voters.

³³⁸ *Zhordania N.*, *Social Democracy and Organization of the Georgian State*, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume I, 2015, p. 82 (in Georgian).

³³⁹ *Arsenidze R.*, *Democratic Republic*, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 53 (in Georgian).

³⁴⁰ *Arsenidze R.*, *Democratic Republic*, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 54 (in Georgian).

have the right to express their opinion on any law adopted by the Parliament - 'to either approve or disapprove it.'³⁴¹ He supported the right of popular initiative as well.³⁴² However, *Pavle Sakvarelidze*³⁴³ did not support the idea of mandatory referendums, in contrast to the Socialist Federalist, *Ivane Cherkezishvili*.³⁴⁴ The National Democratic Party was opposed to referendums.³⁴⁵

In spite of these debates, the optional referendum, as well as the popular initiative are entrenched in every draft, while the mandatory referendum was not included in any of them. The first sample draft stated, that 50 000 voters were entitled to a popular initiative and could demand optional referendum.³⁴⁶ In the second sample draft, the number of voters necessary for the popular initiative was reduced to 5000, while the number of voters required for a referendum was reduced to 20 000³⁴⁷ (there are identical numbers in the draft³⁴⁸). The dismissal of the idea of a mandatory referendum was explained in the commentary to the draft in this way: 'The Commission dismissed the idea of the referendum due to the fact, that if the draft laws are presented to the people for their approval very often, this leads to the overwhelm and the indifference on the part of the citizens.'³⁴⁹ Finally, according to the Constitution, the signatures necessary for the initiative remained the same as in the draft, while the required number of voters for a referendum was increased up to 30000. The negation of the mandatory referendum was an important compromise. *Rajden Arsenidze* did not share the argument, that the mandatory referendum would protect the interests of people in a better way. In his words, if the people do not ask for a referendum, this means that they agree with the

³⁴¹ Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 604 (in Georgian).

³⁴² Speech of Chairperson of the Government, *N. Zhordania*, Constituent Assembly, Sitting of 1 December, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 605 (in Georgian).

³⁴³ *Sakvarelidze P.*, For the Constitution of Georgia, in: 'Chronicles of Georgian Constitutionalism', 2016, p. 314 (in Georgian).

³⁴⁴ Meeting of the Constitutional Commission, 11 June 1918, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 28 (in Georgian).

³⁴⁵ Meeting of the Constitutional Commission, 11 June 1918, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 27 (in Georgian).

³⁴⁶ The Parliament, Sample Draft of *R. Arsenidze*, The Constitution of the First Republic of Georgia (1921), Materials and Documents, p. 228 (in Georgian).

³⁴⁷ The Parliament, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 804 (in Georgian).

³⁴⁸ The Draft Constitution of Georgia adopted by the Constitutional Commission of the Constituent Assembly, May 1920, Article 71 and 72, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 439 (in Georgian).

³⁴⁹ The Parliament, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 831 (in Georgian).

adopted law.³⁵⁰ He omitted one important aspect here. It is all the issue of organization. The collection of several thousand signatures is an important impediment, which clearly makes the optional referendum a less effective mechanism, compared to the mandatory one. It was also a deviation from the Swiss model, as the Swiss Constitution explicitly enumerates the issues, on which it is mandatory to hold a referendum.³⁵¹

In spite of this, the importance of non-mandatory referendums should not be diminished. *Wilhelm Haller* thought, that the introduction of this very mechanism had a fundamental influence on the political system in Switzerland.³⁵² The referendum coerced the governing class to take the popular opinion into account. The law-making procedure became an ‘incessant process of seeking compromises’ and fostered the development of Switzerland into a ‘concordat democracy’ (i.e. a ‘consensus-oriented democracy’).³⁵³ The introduction of a referendum in Georgia was not only important for the reinforcement of the power of people; *Noe Zhordania* considered that it carried great importance for the amplification of the unity of the people and the state. It tied the society and the Parliament and transformed them into one organism.³⁵⁴ The members of the Parliament always had to consider the factor, that the laws adopted by them could be tested through the referendum, which would force them to work in a careful and diligent manner.³⁵⁵ Referendum and people’s initiative are considered as tools of the involvement and the activation of the society by *Wilhelm Haller*, since ‘the elections are a passive opportunity and allow for a participation only, when the citizens are called upon’.³⁵⁶ He also shared the arguments of the accountability of the rulers and the balancing of them by the people.³⁵⁷

2. THE CONSTITUTIONAL REFERENDUM AND THE CONSTITUENT POWER

Popular sovereignty, the power of people and non-intermediary democracy are closely linked to the rules of the revision of the Constitution. *Noe Zhordania* viewed the constitutional referendum (ratification) as the only mechanism for the limitation of the

³⁵⁰ The Parliament, *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume II, p. 831 (in Georgian).

³⁵¹ *Haller W.*, *The Swiss Constitution in a Comparative Context*, 2012, p. 125.

³⁵² *Haller W.*, *The Swiss Constitution in a Comparative Context*, 2012, p. 128.

³⁵³ *Haller W.*, *The Swiss Constitution in a Comparative Context*, 2012, p. 128.

³⁵⁴ *Zhordania N.*, *Social Democracy and Organization of the Georgian State*, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume I, 2015, pp. 82-93 (in Georgian).

³⁵⁵ *Zhordania N.*, *Social Democracy and Organization of the Georgian State*, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), *The Constitution of the First Republic of Georgia (1921)*, Materials and Documents, Volume I, 2015, pp. 82-93 (in Georgian).

³⁵⁶ *Haller W.*, *The Swiss Constitution in a Comparative Context*, 2012, p. 33.

³⁵⁷ *Haller W.*, *The Swiss Constitution in a Comparative Context*, 2012, p. 4.

power of the Constituent Assembly and supported it.³⁵⁸ *Pavle Sakvarelidze* was eagerly advocating the idea of constitutional referendum.³⁵⁹ *Aleksandre Mdivani* was even more radical in framing the issue and stated, that ‘to put the revision of the Constitution in the hands of people, is the last step of people’s dominion’.³⁶⁰

The debates on the revision of the Constitution were held at the sitting of the Commission of 5 November 1919.³⁶¹ *Giorgi Naneishvili* prepared the sample draft, according to which one fourth of the deputies and 50 000 voters enjoyed the right of initiative.³⁶² *Giorgi Gvazava* asserted that 20 000 voters should be granted the right of initiative; he also supported the referendums.³⁶³ *Mukhran Khocholava* also thought that the proposed number was too large; at the same time he believed, that the Parliament had to make take its decisions by three-fourths majority of the votes of its members.³⁶⁴ In his opinion, the initiative, dismissed by the Parliament, could still be placed put to the vote in the referendum; if the people would support it and the Parliament would oppose it, the Parliament had to be dissolved.³⁶⁵ *Meliton Rusia* supported the idea of the two-thirds majority of the votes.³⁶⁶ In view of the Socialist Revolutionary *Ivane Gobechia*, the right of initiative should be granted to 20 000 - 25 000 people. He supported *Mukhran Khocholava* and believed, that the initiative could be placed to vote in the referendum even if the Parliament would dismiss it.³⁶⁷ *Giorgi Gvazava* took a different approach

³⁵⁸ *Zhordania N.*, Social Democracy and Organization of the Georgian State, 4 August 1918, in: *Jgerenaia E., Kenchoshvili T.* (eds.), The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, pp. 81-82 (in Georgian).

³⁵⁹ Meeting of the Constitutional Commission, 11 June 1918, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume I, 2015, p. 27 (in Georgian).

³⁶⁰ *Mdivani A.*, Government and Its Accountability, in: ‘Chronicles of Georgian Constitutionalism’, 2016, p. 365 (in Georgian).

³⁶¹ Journal of the Sitting of the Constitutional Commission of the Constituent Assembly, 5 November 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 156 (in Georgian).

³⁶² Journal of the Sitting of the Constitutional Commission of the Constituent Assembly, 5 November 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, pp. 151-152 (in Georgian).

³⁶³ Journal of the Sitting of the Constitutional Commission of the Constituent Assembly, 5 November 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, pp. 152-153 (in Georgian).

³⁶⁴ Journal of the Sitting of the Constitutional Commission of the Constituent Assembly, 5 November 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 153 (in Georgian).

³⁶⁵ Journal of the Sitting of the Constitutional Commission of the Constituent Assembly, 5 November 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 154 (in Georgian).

³⁶⁶ Journal of the Sitting of the Constitutional Commission of the Constituent Assembly, 5 November 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 154 (in Georgian).

³⁶⁷ Journal of the Sitting of the Constitutional Commission of the Constituent Assembly, 5 November 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, pp. 154-

to this issue: ‘If the Parliament does not approve this initiative, it disappears and does not go anywhere; only if the Parliament approves it, will it be submitted to the people through a referendum. If the voters’ initiative enters the Parliament, the Parliament will only confirm the receipt of the given proposal (initiative) regarding the revision of the Constitution and transfer it to the people through the referendum. If the people support it – the Parliament will start to draft the respective law.’³⁶⁸ The Commission failed to make a decision at that sitting and they postponed the debates on this issue until the next meeting. On November 26, the debates on the revision of the Constitution were resumed. Finally, during the voting two texts (25 000 - initiated by *Giorgi Gvazava* and 50000 – initiated by *Giorgi Naneishvili*) ended in a tie. The position of the chairman, *Rajden Arsenidze* appeared to be decisive, as he supported the latter version (he proposed the requirement of 100 000 voters, but his initiative did not pass).³⁶⁹ *Pavle Sakvarelidze* proposed the idea to grant the right of initiative to the majority of *erobas* and self-governments of cities,³⁷⁰ however, this was not included in the final version.

The Constitution ultimately granted the right of initiatives to 50% +1 deputies and 50 000 voters.³⁷¹ In order to adopt the constitutional amendments, the Constitution required the votes of two-thirds of the members of the Parliament and a referendum.³⁷²

X. CONCLUSION

If the reader does not take the work of adjustment into account, that was carried out by the authors of the Georgian Constitution in the process of drafting the document, it may seem to them that the Georgian Social Democrats were utopians after reading of the Constitution of 21 February 1921. In view of their environment, they had to give up not only their ideal of a socialist republic, but they were also compelled to adopt a democratic model. In order to conceptualize these changes as a transitory model on the way to a socialist republic, there were met with some drawbacks (for instance an

155 (in Georgian).

³⁶⁸ Journal of the Sitting of the Constitutional Commission of the Constituent Assembly, 5 November 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 155 (in Georgian).

³⁶⁹ Journal of the Sitting of the Constitutional Commission of the Constituent Assembly, 5 November 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 159 (in Georgian).

³⁷⁰ Journal of the Sitting of the Constitutional Commission of the Constituent Assembly, 5 November 1919, The Constitution of the First Republic of Georgia (1921), Materials and Documents, Volume II, p. 160 (in Georgian).

³⁷¹ 1921 Constitution of Georgia, Article 145, available at: <<https://matsne.gov.ge/document/view/4801430?publication=0>> (accessed 15.7.2021).

³⁷² 1921 Constitution of Georgia, Article 147, available at: <<https://matsne.gov.ge/document/view/4801430?publication=0>> (accessed 15.7.2021).

obligatory referendum or the status of the Chairman of the Government), however, these changes often constituted an improvement of the model and lead to the strengthening of the popular control over the public bodies. Among these types of solutions, the individual responsibility of ministers is particularly noteworthy. They integrated the institution of non-confidence, a characteristic for the bourgeois parliamentarism, within the democratic system so that, the model did not get closer to the liberal form of government; it was a step away from it instead. This paradoxical twist of arguments often confuses constitutionalists until now and leads to the false classifications, such as the consideration of the political order of the First Republic as a parliamentary system or its placing between the models of direct democracy and parliamentarism, whereas it is unequivocal, that the Constitution made the choice in favor of the former. In addition to what was stated above, it masterfully handled the political and legal problems, such as relationship between the local and central governments, the institution of the head of state, the issue of representation, the electoral system and the power of parliament, the justice system and constitutional review.

The boldness of the Georgian Social-Democrats and other authors of the Constitution, when they sat at the table for the drafting of the supreme law more than century ago is blinding. Their enthusiasm to form the most democratic political union in the world at that time naturally fills the readers with respect. Their constitutional steps were equally determined by the experience of mankind and its critique. They managed to found the previously untested tenets on the solid ground of comparativism. They based these novelties and modifications on the deep analysis of the context and tried to fit theoretical models to it. The viability of the system was confirmed by the three-year long experience. However, the most exciting fact in this history is the fatalism, which stirs all the truly democratic minds.

The authors of the first Georgian Constitution considered the developed model to be a transitory document. They thought that in the future, it would be substituted by the socialist order. The supreme law was drafted with the sentiment, that sooner or later, and the sooner the better, it would be invalidated. Another paradox haunting the document, is that the success of the experiment was determined by its destruction. It seems, that it was born with the stopwatch on and already close to its end. The time whirled it towards the revolution as the storm in *Paul Klee's 'Angelus Novus'* in the interpretation of *Walter Benjamin*.³⁷³ They were aware of the fact that the document drafted by them was doomed for death, but they still worked on it with so much determination and diligence, that even for a reader today it is hard not to get emotional. It takes a strong will to realize, that the thing that you are creating is doomed to perish, and to maintain the motivation, unaffected by this realization. The Georgian Social Democrats focused all their efforts

³⁷³ *Benjamin W.*, *On the Concept of History, The Work of Art in the Age of Mechanical Reproduction, On the Concept of History*, 2008, p. 99.

to ensure that the temporary document would not transform into a permanent project of the development of the country by error.

It is hard to say, which turn the events would have taken, if the Soviet occupation of 25 February 1921 had not ended the independence of Georgia. It is also hard to say, how the document would have worked after 70 years, had the words of the Act of Independence of Georgia of 9 April 1991 still had legal force. We can only look with melancholy at the bits, which have survived from the text of the first Constitution and are spread throughout the neo-liberal dessert of the current Constitution.³⁷⁴ To use the *Jorge Luis Borges* metaphor, from the compilation entitled ‘Museum’ – a very precise title in our context: under the current order, these bits can only serve the marginal function of accommodating those that are ostracized from the societal system.

³⁷⁴ *Borges J. L.*, On Exactitude in Science, ‘Stories’, 2012, p. 351.